

1 UNITED STATES DISTRICT COURT  
 2 SOUTHERN DISTRICT OF OHIO  
 3 WESTERN DIVISION  
 - - -

4 UNITED STATES OF AMERICA, : **CASE NO. 1:20-CR-0077**  
 5 :  
 6 Plaintiff, : **JURY TRIAL, DAY 23**  
 7 vs. :  
 8 : **6th day of March, 2023**  
 9 LARRY HOUSEHOLDER, et al. :  
 10 : **9:30 a.m.**  
 11 Defendant. :  
 12 - - -

13 **TRANSCRIPT OF PROCEEDINGS**  
 14 **BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE**  
 15 - - -

16 APPEARANCES:

17 For the Plaintiff:

18 Emily N. Glatfelter, Esq.  
 19 Matthew Charles Singer, Esq.  
 20 Megan Gaffney Painter, Esq.  
 21 Assistant United States Attorneys  
 22 221 East Fourth Street, Suite 400  
 23 Cincinnati, Ohio 45202

24 For the Defendant, Larry Householder:

25 Nicholas R. Oleski, Esq.  
 Robert T. Glickman, Esq.  
 McCarthy, Lebit, Crystal & Liffman Co.  
 1111 Superior Avenue East, Suite 2700  
 Cleveland, Ohio 44114  
 and  
 Steven L. Bradley, Esq.  
 Marein and Bradley  
 526 Superior Avenue, Suite 222  
 Cleveland, Ohio 44114

1 For the Defendant, Matthew Borges:

2 Karl Herbert Schneider, Esq.  
3 Todd Aaron Long, Esq.  
4 McNees Wallace & Nurick, LLC  
21 East State Street, Suite 1700  
Columbus, Ohio 43215

5 Also present: Larry Householder  
6 Matthew Borges  
Agent Wetzel

7 Law Clerk: Cristina V. Frankian, Esq.

8 Courtroom Deputy: Rebecca Santoro

9 Stenographer: Mary Schweinhagen, RDR, RMR, CRR  
10 United States District Court  
200 West Second Street  
11 Dayton, Ohio 45402

12 Proceedings recorded in stenotype.  
13 Transcript produced with computer-aided transcription.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**(PROCEEDINGS)**

(Proceedings held in open court outside the presence of the jury at 9:37 a.m.)

THE COURT: Sorry to be a couple minutes late. We're back in the open courtroom outside the presence of the jury because we are here for the jury instructions charging conference with the attorneys.

The three attorneys for the United States, Ms. Glatfelter, Mr. Singer, and Ms. Painter, are present, as is the representative Agent Wetzel and the assistant. On behalf of Mr. Householder, we have Mr. Glickman and Nick present. And on behalf of Mr. Borges, we have Mr. Long present, and Mr. Borges is present.

The parties are not required to be here. The Court does acknowledge the presence of Mr. Borges and the agent.

The lawyers are not required to be here but for those who are working on jury instructions.

Given that we have accomplished a great deal electronically, we're in good shape for this morning. I told you the last time we were together at the jury charging conference I intended to listen carefully, not argue, take your comments into consideration, discharge my duty, and come back with a final set of jury instructions.

I told you I anticipated walking through it page by page, and if there were something that was omitted that's not on a

1 page we walk through, you are welcome to bring it to my  
2 attention.

3 So I would like to proceed. Is the government ready?

4 MR. SINGER: Yes, Your Honor.

5 THE COURT: Mr. Householder's counsel as well?

6 MR. OLESKI: Yes, Judge.

7 THE COURT: Mr. Borges's counsel as well?

8 MR. LONG: Yes, Your Honor.

9 THE COURT: All right. Well, I'm ready to go. I am  
10 just going to walk through this page by page. I don't intend  
11 to address the Table of Contents.

12 I'm working from the redlined copy so it helps me  
13 identify where we are.

14 Does anyone wish to be heard on page 1?

15 Hearing nothing. Anybody wish to be heard on page 2?

16 Hearing nothing, page 3.

17 Page 4? Page 5? Page 6? Page 7?

18 Presumably, we will simply eliminate the yellow  
19 highlighted, regarding the stipulations as to authenticity,  
20 documents, and business records that we need not present.

21 Page 8? Page 9? Page 10? Page 11? Page 12? Page 13?

22 Page 14? Page 15?

23 MR. OLESKI: Your Honor.

24 THE COURT: Comment, yes, sir.

25 MR. OLESKI: I apologize.

1 THE COURT: No. Go ahead. Speak right up.

2 MR. OLESKI: Back to page 13.

3 THE COURT: Yes.

4 MR. OLESKI: The highlighted section.

5 THE COURT: Yes.

6 MR. OLESKI: Paragraph 3.

7 THE COURT: Yes.

8 MR. OLESKI: We had proposed changing.

9 THE COURT: "Will" to "may."

10 MR. OLESKI: "Will" to "may." We would ask that the  
11 Court change "will" to "may" given that the conspiracy  
12 requires an agreement of two or more people. Mr. Householder  
13 and Mr. Borges are two people, so the jury could only consider  
14 the involvement of them. They don't -- the jury doesn't  
15 necessarily need to consider the involvement of uncharged  
16 parties.

17 THE COURT: Very well. I'm not headed there.

18 Page 14? Page 15?

19 Ms. Frankian?

20 (Pause.)

21 THE COURT: I want to address the stuff that's in  
22 yellow.

23 On page 13, in regard to the objection as to "will"  
24 versus "may," conspiracy requires an agreement between two or  
25 more persons. The jury cannot consider the charge without

1 considering the involvement of another to some extent.

2 I hear the defendant's argument. On page 14, there is  
3 nothing.

4 On 15, there is nothing.

5 16, 17, 18.

6 On page 19, anybody wish to be heard?

7 MS. GLATFELTER: Your Honor?

8 THE COURT: Yes.

9 MS. GLATFELTER: I think that there needs to be an  
10 "s" added to "others" in the first paragraph under  
11 Allegations.

12 THE COURT: Say it again. I'm sorry. I'll read it.  
13 Give me just a minute. Needs to be an is added to others.

14 MS. GLATFELTER: Oh, never mind. I misread. I  
15 misread. You're okay. Sorry about that.

16 THE COURT: All right. The Court believes that a  
17 summary of the allegations is appropriate. It doesn't feel  
18 the need to reiterate the entirety of the indictment or to  
19 list all of the manner and means given that an overt act is  
20 not required for conviction. So the Court has proposed the  
21 summary and incorporated some minor omits reflected in red.

22 On page 21?

23 MR. OLESKI: Judge?

24 THE COURT: Okay. This is important.

25 MR. OLESKI: Yes.

1 THE COURT: Go ahead.

2 MR. OLESKI: On page 20 of the summary of the  
3 allegations.

4 THE COURT: Yes.

5 MR. OLESKI: I have one small correction, or  
6 proposed edit. In the very last paragraph on page 20.

7 THE COURT: Yes.

8 MR. OLESKI: First sentence, the -- that sentences  
9 reads "To defeat a referendum -- the indictment alleges that  
10 the enterprise used the bribe payments in furtherance of the  
11 conspiracy, including to promote and ensure the passage of HB  
12 6, and to defeat the referendum effort that would have  
13 resulted in the repeal of HB 6."

14 I propose changing "that would have resulted in the  
15 repeal of HB 6" with "a referendum effort that sought to try  
16 to repeal HB 6."

17 THE COURT: "That sought to try to repeal HB 6"?

18 MR. OLESKI: Correct. Because the referendum would  
19 have only put the issue on the ballot for the voters, not  
20 result in the repeal of House Bill 6 had the referendum  
21 garnered sufficient signatures.

22 THE COURT: That's fine, "that sought to repeal."

23 Did you wish to be heard?

24 MR. SINGER: The government agrees.

25 THE COURT: Okay.

1           MR. SINGER: "Sought to repeal" is fine. "Could  
2 have repealed" or "could repeal," that might be a little  
3 cleaner.

4           THE COURT: We'll clean it up.

5           Page 21, elements. Anybody wish to be heard?

6           The Court declines to add defendant's proposed fifth  
7 element as the substance of the proposed element. It's  
8 already included in the Court's instruction on conspiracy  
9 generally in connection to conspiracy.

10          Any comments on page 22?

11          Page 23?

12          MR. OLESKI: Judge?

13          THE COURT: Yes.

14          MR. OLESKI: On page 22.

15          THE COURT: Yes.

16          MR. OLESKI: We would just reiterate our proposed  
17 instruction and our objection to the government's proposed  
18 instruction, and we would ask that the Court include in  
19 defining what an enterprise is, "that the government is  
20 required to prove a structure distinct from the pattern from  
21 the racketeering acts." We understand that the Sixth Circuit  
22 has not adopted that proposal, but just to preserve the issue,  
23 we'd ask the Court to give that instruction.

24          THE COURT: Very well.

25          MR. LONG: Your Honor, just for the record, we would



1 join that -- join that objection and request. Thank you.

2 THE COURT: Very well.

3 Does the government wish to be heard on that issue?

4 MR. SINGER: No, Your Honor. Thank you.

5 THE COURT: I'm comfortable with the Sixth Circuit  
6 instruction.

7 Page 23? Page 24? Page 25? Page 26? Page 27? Page  
8 28? Page 29? Yes?

9 MR. OLESKI: Judge?

10 THE COURT: Yes.

11 MR. OLESKI: On page 29, I propose a small edit or  
12 correction. The very last paragraph on that page before the  
13 yellow highlighting reads "Whether a person or entity is a  
14 conspirator or whether a conspiracy existed is for you, the  
15 jurors, to decide."

16 I'd just propose flipping conspiracy. So the sentence  
17 should read "Whether a conspiracy existed or a person or  
18 entity is a conspirator is for you, the jurors, to decide."  
19 Just to flip the order of that phrase in that sentence.

20 THE COURT: Does the government wish to be heard?

21 MR. SINGER: No objection, Your Honor.

22 THE COURT: Very well. In general, the Court  
23 declines to include defendant's proposed edits on the  
24 racketeering activity either because they are inaccurate or  
25 misleading statements of the law or the Court's instruction

1 already states what the defendants have proposed.

2 The Court also previously noted that it would not use  
3 "the defendant" in the racketeering activity elements given  
4 that the jury does not need to find that either defendant  
5 actually committed the predicate acts.

6 The Court originally substituted "the accused" for "the  
7 defendant," but has now opted to be more specific by changing  
8 "the accused" to, quote, "the defendant or a conspirator," end  
9 quote.

10 In terms of flipping the order of conspirator versus  
11 conspiracy, both sides agree on that.

12 Are there comments on page 30?

13 MR. OLESKI: Yes, Judge. And just so I don't have  
14 to reiterate this objection for each of the racketeering acts,  
15 we would just propose that very first sentence for each one of  
16 the instructions on the racketeering acts, that the Court  
17 should include reasonable doubt language. And what I would  
18 propose is something along these lines: "To find that the  
19 government has proven this racketeering act, you must find  
20 beyond a reasonable doubt," and then the elements of the  
21 offense.

22 THE COURT: Does the government wish to be heard?

23 MR. SINGER: Your Honor, that's not an accurate  
24 statement of the law. The predicate acts do not need to be  
25 found beyond a reasonable doubt. This is a conspiracy charge.

1 So what the jury needs to find is that the defendant engaged  
2 in a conspiracy or agreed to participate in a conspiracy  
3 beyond a reasonable doubt through these acts, but they do not  
4 feed to find that these acts were actually committed.

5 THE COURT: Very well. Last word from the defense?

6 MR. OLESKI: We agree that the -- that this is a  
7 conspiracy and that the jury does not need to find that any  
8 act was actually committed. However, the jury has to -- the  
9 jury must find that the defendants either agreed that they  
10 would commit or agreed that some other conspirator would have  
11 committed at least two racketeering acts, and we do think that  
12 that needs to be proved beyond a reasonable doubt.

13 MR. LONG: For the record, Your Honor, we'd join in  
14 that addition to either predicate act.

15 THE COURT: Very well. I think what is being  
16 proposed is confusing. We stated before and after.

17 Is there a concern about page 31?

18 MR. SINGER: Yes, Your Honor. In the defendants'  
19 proposed instructions, they propose explicit quid pro quo  
20 language in the second paragraph, and that's consistent with  
21 the instructions that are in the extortion under color of  
22 official right which is explaining what a bribe is. And the  
23 government would propose including the same explicit quid pro  
24 quo language that's included in the extortion under color of  
25 official right explaining what a bribe is in this paragraph

1 relating to whether the proposed exchange was clearly  
2 understood.

3 THE COURT: Where do you find the definition you  
4 want to plug in there?

5 MR. SINGER: It is on page 35, Your Honor.

6 THE COURT: Slow down and I can't find it yet. I am  
7 looking at the redlined edition. You are talking about  
8 something that the defendant proposed. I'm working off of my  
9 proposal.

10 MR. SINGER: Yes, Your Honor. So --

11 THE COURT: What page?

12 MR. SINGER: The page that we're discussing is page  
13 31. And then the language that the government would propose  
14 is on page 35.

15 THE COURT: All right.

16 MR. SINGER: It's the first bullet, and the sentence  
17 is, "While a bribery agreement need not be expressed --"

18 THE COURT: Slow down. She is writing it all down.

19 MR. SINGER: I apologize.

20 THE COURT: Go ahead.

21 MR. SINGER: "While a bribery agreement need not be  
22 expressed, it must be explicit, by which I mean the government  
23 must show that the contours of the proposed exchange were  
24 clearly understood."

25 The sentence continues, the language on page 31, states

1       that "but the government must show that the proposed exchange  
2       was clearly understood." We would propose putting the  
3       explicit language at the front end of that sentence.

4               THE COURT: And what's the defense make of that?

5               MR. OLESKI: We agree that the instruction should  
6       include the explicit quid pro quo language. I wish to be  
7       heard on something else, but we agree that the explicit quid  
8       pro quo language should be included in the instruction.

9               THE COURT: Very well. I hear you both.

10              You wanted to be heard on something else?

11              MR. OLESKI: Yes, Judge. We had proposed -- our  
12       proposed language for the quid pro quo instruction or explicit  
13       quid pro quo instruction was slightly different than the  
14       explicit quid pro quo instruction for the Hobbs Act extortion  
15       in the Sixth Circuit's pattern, Hobbs Act extortion  
16       instruction.

17              What we would propose is that the Court include that this  
18       explicit quid pro quo agreement must exist at the time, at the  
19       time that the bribe was paid. It cannot be formed later. And  
20       that the essential elements of a bribe is therefore the  
21       agreement between a public official and a payor to exchange  
22       official acts for the benefit to the official.

23              And additionally, we would ask that the Court exclude  
24       the -- remove the circumstantial evidence language in the  
25       instruction, that the bribe can be proved through

1 circumstantial evidence. We had briefed that in connection  
2 with or we submitted some supplemental authority to further  
3 support our motion to dismiss. We cited the *Fisher* court  
4 decision out of New York that held that explicit quid pro quo  
5 cannot be proved with circumstantial evidence. So we would  
6 stand on that objection, understanding that the Court has  
7 already rejected that argument.

8 And --

9 THE COURT: Very well. Are you talking about the  
10 Hobbs Act extortion language or the honest services fraud  
11 language?

12 MR. OLESKI: I'm talking about the honest services  
13 fraud instruction.

14 THE COURT: I'm sorry? I didn't hear you.

15 MR. OLESKI: I'm talking about the honest services  
16 fraud instruction, Judge.

17 THE COURT: Okay.

18 MR. OLESKI: And just noting for the Court that our  
19 proposed instruction is slightly different than the pattern  
20 instruction for the Hobbs Act instruction.

21 THE COURT: Very well. Your position is noted.

22 I am sorry. Did you -- excuse me. Did you wish to be  
23 heard, Mr. Singer?

24 MR. SINGER: I'm happy to let the defendant finish  
25 the point.

1           MR. OLESKI: I'm proposing additional language for  
2 the honest services fraud instruction. So if Mr. Singer wants  
3 to be heard on what I just said, I'm happy to let him.

4           THE COURT: Isn't that generous and loving.  
5 Did you wish to be heard further?

6           MR. SINGER: Well, Your Honor, a couple things.  
7 First, as far as whether the bribe agreement needs to be  
8 agreed to or the payment needs to be made at the time of the  
9 bribe agreement, that's just not consistent with the law, Your  
10 Honor. The parties can agree to a quid pro quo and then  
11 subsequently provide the quid or the quo for that matter for  
12 purposes of the agreement.

13           And the government will rest on its arguments relating to  
14 circumstantial evidence. I think this Court -- the Court has  
15 already rejected that. I think it's completely appropriate  
16 and consistent with the law in this circuit.

17           And just to go back to the point that I was raising  
18 before, just so -- just so the Court is clear, we would  
19 propose including the explicit quid pro quo language after the  
20 winks and nod language that was added yesterday. So that  
21 would be inserted.

22           I didn't think I was not -- I think that I was not very  
23 clear before, and I wanted to clear that up.

24           THE COURT: I got it. Would you be willing to let  
25 me hear if they have any further statement on this?

1 MR. SINGER: Yes, Your Honor.

2 MR. OLESKI: As it relates to the explicit quid pro  
3 quo, we'd stand on the arguments that we made in our motion to  
4 dismiss and the supplemental authority that we submitted,  
5 along with the authority we cited in our jury instructions.

6 There are a few additions that we would propose to the  
7 honest services fraud instruction.

8 THE COURT: Are we there yet?

9 MR. OLESKI: Yes.

10 THE COURT: Yes.

11 MR. OLESKI: We are on page 31, I believe.

12 THE COURT: All right, okay. Go ahead.

13 MR. OLESKI: Mr. Singer asked that the Court use --  
14 include an explicit quid pro quo language that the Court --  
15 that's also included in the Hobbs Act extortion instruction.  
16 We would ask that the Court also include -- this is from the  
17 Hobbs Act extortion instruction, but includes this language in  
18 the honest services fraud instruction that the language on  
19 page 34 of the Court's instructions -- the three bullet points  
20 at the bottom of page 34, Judge.

21 THE COURT: And what do you want in these three  
22 bullet points?

23 MR. OLESKI: Let me just make sure I'm on the same  
24 page, Judge.

25 THE COURT: Okay.



1           MR. OLESKI: That -- we would propose that the Court  
2 include an instruction that "Efforts to buy favor or  
3 generalized goodwill do not necessarily amount to bribery.  
4 Bribery does not include gifts given in the hope that at some  
5 unknown, unspecified time a public official might act  
6 favorably in the payor's interest. Gifts exchanged solely to  
7 cultivate friendship are not bribes. Things of value given in  
8 friendship and without expectation of anything in return are  
9 not bribes."

10           And I think this is already included in the Court's  
11 instructions, but that "It is not a defense to bribery that  
12 the public official would have done the official act anyway,  
13 even without the receipt of the property."

14           THE COURT: And that's in what I have proposed.

15           MR. OLESKI: That's in the Hobbs Act instruction,  
16 Judge. We'd ask that that language be included in the honest  
17 services fraud instruction.

18           THE COURT: Okay. I understand what you're saying.

19           Okay. I was at page 31. I'm now at 32 on the redlined  
20 version. Is there anything on that page that we haven't  
21 already addressed in general?

22           MR. OLESKI: Just a small correction, Judge. On  
23 page 32, there are two bullet points, A and B. I would  
24 propose adding in the first word in bullet point B the word  
25 "second."

1 THE COURT: Does the government wish to be heard?

2 MR. SINGER: No, Your Honor.

3 THE COURT: Very well. I'll take it under  
4 consideration.

5 Page 33? I hear nothing.

6 Page 34? We've talked about the three bullet points and  
7 adding them to the honest fraud language. We'll add "second"  
8 on your original proposal.

9 I have heard you on 34 but go ahead.

10 MR. OLESKI: Just to preserve the record, Judge.

11 THE COURT: Yes.

12 MR. OLESKI: We take the position that the Hobbs Act  
13 extortion statute does not apply to bribery, and applying it  
14 to bribery is contrary to the language of the statute. I  
15 acknowledge that the United States Supreme Court has held  
16 otherwise, but we'd preserve that issue for purposes of  
17 appeal.

18 THE COURT: Very well. We've talked about page 35.  
19 Is there more to discuss?

20 Page 36? Mr. Borges's lawyer has a point?

21 MR. LONG: Your Honor, I'm going to defer to  
22 Mr. Singer for now, and then respond accordingly.

23 THE COURT: Well, that's a credit to you as well.

24 Mr. Singer.

25 MR. SINGER: So the government has thought about

1 what the defense has proposed as far as what exactly is  
2 required in a quid pro quo and the private honest services  
3 context, and I'm focusing right now on the last paragraph on  
4 page 36. It currently reads that something of value needs to  
5 be exchanged for something else.

6 And after considering the defendants' language, although  
7 we don't agree with all of the language, it does seem  
8 appropriate to cabin or something else in a way that would  
9 give the jury a little bit more guidance.

10 So focusing on what the defendants have proposed on page  
11 13 of the document that they sent yesterday, the government  
12 would not object and thinks it's appropriate to include the  
13 first sentence in the redlined version on page 13. It would  
14 essentially define the "something else" as official act, but  
15 then defining "official act" as the improper disclosure of  
16 business information belonging to the employer.

17 So it would be -- the quid pro quo would be an exchange  
18 of something of value, in exchange for a proper disclosure of  
19 business information belonging to the employer. That's a  
20 subset of what the defendants have requested in their language  
21 but one that the government believes is appropriate.

22 So, in essence, the "something else" would be, if we were  
23 to follow the defendants' version, would be an official act,  
24 and then "official act" would be defined as I've described.

25 An alternative to that would be to include what I've just

1 proposed, instead of "for something else," to include "the  
2 improper disclosure of business information relating to the  
3 employer." That would be the quo that the something of value  
4 is in exchange for.

5 THE COURT: Defense wish to be heard?

6 MR. LONG: Yes. Thank you, Your Honor. And we  
7 appreciate that the government agrees that "something else"  
8 should be modified to "official act." So I just want to make  
9 sure I understand what Mr. Singer was proposing. So  
10 substituting the words "something else" for "official act" I  
11 believe is step one?

12 MR. SINGER: I think there's two ways we could  
13 handle it. We could substitute "official act" and then define  
14 "official act" as I've described. That would be our proposal.  
15 Or just include -- instead of "official act," just include  
16 what we have defined "official act" to be, which is the  
17 improper disclosure of business information belonging to the  
18 employer.

19 After talking this out loud to myself, it would seem that  
20 the second version would be less confusing, but --

21 THE COURT: Very well. Did Mr. Singer clarify your  
22 inquiry?

23 MR. LONG: He did, Your Honor. We feel that it is  
24 absolutely appropriate to substitute "something else" for  
25 "official act" because that is a requirement that is

1 recognized by both the Supreme Court and the Sixth Circuit.  
2 We feel the better approach is to then define what an  
3 "official act" is in the context of private honest services  
4 fraud because it is slightly different than in a public honest  
5 services fraud.

6 We disagree, though, with the language proposed by  
7 Mr. Singer that it's just business information. The United  
8 States Supreme Court in *Skilling* cited with approval a case  
9 called *Procter & Gamble*. It was a district court case, Your  
10 Honor, I think from the '20s. And what *Procter & Gamble* said  
11 was, "An employee has a fiduciary duty to protect the trade  
12 secrets and confidential business information of the  
13 employer."

14 The Supreme Court has been wrestling for years with  
15 limiting principles with respect to honest services fraud.  
16 But those terms, "trade secrets" and "confidential business  
17 information," are actually terms of art. While we originally  
18 proposed including some definitions of trade secrets, we  
19 understand that there's been no allegation about trade secrets  
20 and that could be confusing to the jury.

21 However, there has to be a limiting principle to explain  
22 what constitutes breach of a fiduciary duty. And the Supreme  
23 Court has acknowledged that the improper disclosure of, quote,  
24 "confidential business information" -- and that's the language  
25 we've proposed -- that that can constitute honest services

1 fraud, private honest services fraud. And that term,  
2 "confidential business information," has been defined by the  
3 Supreme Court. So rather than what we would consider to still  
4 be a very vague and overbroad, just any business information,  
5 because any business information could apply to literally  
6 anything an employee anywhere at any time could be paid to  
7 disclose. It could apply to a whistleblower who is reporting  
8 business information about the CEO of a company that was  
9 improper. It's limitless.

10 So cabining it to confidential business information as  
11 defined by the Supreme Court as acknowledged by the Sixth  
12 Circuit I think is the more appropriate instruction in this  
13 case, Your Honor. Thank you.

14 THE COURT: Last word from the government.

15 MR. SINGER: Your Honor, if I may argue with myself  
16 for a third time. The official act language -- first of all,  
17 the official act language as set forth in the Supreme Court --  
18 by the Supreme Court, it is clearly in the context of the  
19 public honest services fraud. That's how it was described in  
20 *McDonald*. That's the context in which it was presented and  
21 used.

22 So using "official act" in this context could create some  
23 confusion for the jury. If we're just throwing the same word  
24 but defining it different ways in three different predicates,  
25 the jury, I think, would probably be confused by that. So the

1 better approach, we believe, would be to describe the  
2 "something else" as the improper disclosure of business  
3 information belonging to the employer.

4 As to the limiting principle that's proposed by the  
5 defendant that it has to be either trade secrets or defined as  
6 confidential business information, that's not found in the law  
7 in this circuit. *Frost*, the lead case in this area, has not  
8 found that that is a requirement. And, in fact, the language  
9 that is here does limit it, both by characterizing the  
10 disclosure as improper. So outside the duties and  
11 responsibilities of the employer -- of the employee, I'm  
12 sorry. And it also cabins it by the third element that the  
13 information must be the type that the defendant foresaw or  
14 reasonably should have seen by causing this employer to suffer  
15 economic harm.

16 So it's not just any information. It's information that  
17 was improperly disclosed and which might cause the employer to  
18 suffer economic harm. With that -- cabined in that way in the  
19 context of a bribery agreement, the elements I think are not  
20 vague and consistent with the law as set forth in this  
21 circuit.

22 THE COURT: Last word, Mr. Long.

23 MR. LONG: Yes, Your Honor. Your Honor, the Supreme  
24 Court has emphasized that the most important element -- the  
25 Supreme Court has never addressed whether the foreseeable

1 economic harm element that's recognized in the Sixth Circuit  
2 is -- they've never weighed in on that element. But they have  
3 weighed in substantially on the breach of the fiduciary duty.

4 And the word "improper" doesn't really give the jury  
5 enough information or guidance to determine what is improper.

6 So is it improper under some law? Is it improper under a  
7 standard? Is it improper under the terms of their employment  
8 and the description of their job duties? We feel that for the  
9 jury to be fully instructed consistent with the constitutional  
10 limiting principles, that there needs to be an explanation of  
11 what would be improper.

12 So the language that we submitted -- the proposed  
13 language that we've submitted on page 13 we feel better  
14 describes that.

15 And actually, the language that the government had  
16 proposed in their suggested edits about information that the  
17 employer intended to keep secret, that actually better defines  
18 the scope than just simply leaving it at improper disclosure  
19 of business information.

20 I think if -- I think if the instruction included, as the  
21 government had proposed over the weekend, the improper  
22 disclosure of business information that the employer intended  
23 to be kept secret, that would at least give the jury some  
24 guidance. And we wouldn't object to that -- to that language  
25 being included, and it was already proposed by the government.



1           So we would agree with that modification. And, Your  
2 Honor, I do have a couple other points for the record when the  
3 Court is ready.

4           THE COURT: While we are on this, using "official  
5 act" -- quote, "official act," quote, for the private honest  
6 services fraud is confusing because, quote, "official act,"  
7 quote, already has a different meaning in the public official  
8 honest services fraud.

9           We already have an explanation about fiduciary duties.  
10 Proposed changing it to "improper disclosure of business  
11 information, specifically information that the employer  
12 intended to keep secret." Does the defense continue to have  
13 concern?

14           MR. LONG: Your Honor, we would just -- again for  
15 purposes of the record -- note an objection, stand on our  
16 previously submitted proposed instructions and objections to  
17 the government's, as well as incorporate our previously filed  
18 motion to strike which addressed the constitutionality of  
19 private honest services fraud here as applied. That private  
20 honest services fraud is unconstitutionally vague. Again, we  
21 are preserving these issues for the record, not intending to  
22 argue those points any further.

23           Your Honor, we do have a couple of other suggested edits.

24           THE COURT: All right. I'm headed towards changing  
25 it to "information that the employer intended to keep secret."

1 We need to get through this.

2 You had additional points, Mr. Long.

3 MR. LONG: Yes, Your Honor. In the -- on page 36,  
4 the paragraph defining "scheme."

5 THE COURT: Yes.

6 MR. LONG: The second sentence, substituting for the  
7 last word, it says "involving bribes." We would suggest  
8 substituting the word "bribes" for, quote, "the intended  
9 breach of a fiduciary duty through bribery." We think that's  
10 a more accurate statement and will help better instruct the  
11 jury.

12 THE COURT: Does the government wish to be heard?

13 MR. SINGER: No, Your Honor.

14 THE COURT: Mr. Householder's counsel?

15 MR. OLESKI: Only that we join in all of the  
16 objections that Mr. Borges is making. Otherwise, no.

17 THE COURT: All right. I've indicated where I am.  
18 And if you didn't propose these suggestions before today, I'm  
19 not sure they are properly before us.

20 Be that as it may, Mr. Long, did you get through your  
21 other items?

22 MR. LONG: Not yet, Your Honor. We did propose that  
23 on page 13 of our Word document submitted over the weekend.

24 THE COURT: Okay.

25 MR. LONG: Your Honor, we would also suggest some

1 edits to -- I'm sorry. I am trying to get to the paragraph --  
2 on page 37, Your Honor.

3 THE COURT: Yes.

4 MR. LONG: The paragraph beginning "When the  
5 defendant or conspirator."

6 THE COURT: Yes.

7 MR. LONG: We would suggest modifying that sentence  
8 to read "When the defendant or conspirator is the bribe payor,  
9 it is sufficient if the defendant or conspirator intends or  
10 solicits the employee to breach his fiduciary duty to the  
11 employer in exchange for a thing of value and reasonably  
12 should have foreseen that the breach would create an  
13 identifiable economic risk to the employer."

14 Your Honor, we'd suggest that "because the breach of the  
15 fiduciary duty and the foreseeable risk of harm are two  
16 different elements." And then we would suggest defining what  
17 a foreseeable -- a reasonably foreseeable economic risk is.  
18 And this is derived from the Sixth Circuit's case in *Frost*,  
19 that that term means that "The defendant might reasonably have  
20 contemplated some concrete business harm to the employer  
21 stemming from the breach of the employee's fiduciary duty.  
22 Proof that the employer simply suffered only the loss of the  
23 loyalty and fidelity of the employee is insufficient."

24 And, again, that is drawn directly from the Sixth Circuit  
25 in *Frost*. Presently, I don't believe that the risk of

1 economic harm is sufficiently defined for the jury, and  
2 because that is an accurate statement of the law, we would ask  
3 that it be included.

4 THE COURT: Very well. I hear you.

5 Does the government wish to be heard?

6 MR. SINGER: Your Honor, I think the language as  
7 written is appropriate, and the defendants' suggestion does  
8 not add to what is already there.

9 THE COURT: Very well. Has Mr. Householder been  
10 heard on Mr. Todd's issues?

11 MR. OLESKI: Yes. We again join in that objection,  
12 Judge.

13 THE COURT: Very well. Nothing on page 38 -- do we  
14 have one more?

15 MR. LONG: I am sorry, Your Honor. I do have one  
16 more.

17 THE COURT: No, I understand but -- go ahead.

18 MR. LONG: Your Honor, we would propose -- and this  
19 again is from what we submitted over the weekend on page 13,  
20 but it's the -- this is directly from the Supreme Court in  
21 *Skilling*, that it is insufficient if it is merely an  
22 undisclosed conflict of interest or undisclosed self-dealing  
23 that may be created by the actual intended or solicited thing  
24 of value.

25 The Supreme Court in *Skilling* expressly excluded

1       undisclosed conflicts of interest and undisclosed self-dealing  
2       by the employee as sufficient for private sector honest  
3       services fraud. It is an accurate statement of the law. We  
4       ask that it be included so that the jury can understand better  
5       the scope of what a breach of a fiduciary -- what breach of a  
6       fiduciary duty is sufficient. That if it is not sufficient,  
7       that it simply be a conflict of interest.

8               THE COURT: Very well. Anything further from the  
9       government?

10              MR. SINGER: Your Honor, these instructions make it  
11       clear that to violate this statute, it's a bribery, a quid pro  
12       quo bribery agreement is required. Nothing suggests that a  
13       conflict of interest is sufficient. These instructions  
14       contemplate what the law requires. Nothing more is required.

15              THE COURT: On behalf of Mr. Householder?

16              MR. OLESKI: We join Defendant Borges's objections.

17              THE COURT: Very well. They are noted. I think  
18       they are confusing. I think the instruction provided is spot  
19       on.

20              Is there anything further on these pages, Mr. Long,  
21       before we proceed?

22              MR. LONG: No, Your Honor. Thank you.

23              THE COURT: Nothing on 38.

24              Page 39?

25              MR. OLESKI: Yes, Judge.

1 THE COURT: Go ahead.

2 MR. OLESKI: We would propose in the first element  
3 of this offense that the Court strike the language "the  
4 defendant or conspirator" and replace it with "public  
5 servant." The Ohio bribery statute only applies to the  
6 specific subsection that's at issue here 2921.02(B) of the  
7 Revised Code only applies to public officials. So we think  
8 that the instruction might be confusing in that the jury might  
9 conclude that the bribery of private individuals might be  
10 implicated by -- by these elements.

11 And then just for the record, we would reiterate our --  
12 as we communicated in our proposed edits over the weekend,  
13 that the Court instruct -- give further instruction on bribery  
14 and essentially incorporating the honest services wire fraud  
15 instruction and the extortion instruction here. Meaning to  
16 include an official act requirement, a quid pro quo  
17 requirement, and I think without that -- without those further  
18 instructions, the Ohio state -- the Ohio statute is  
19 unconstitutional. There is no limiting principle.

20 So those are our two objections to this instruction,  
21 Judge.

22 THE COURT: All right. So noted.

23 Anybody further on 39?

24 MR. LONG: Your Honor, we would join that objection.  
25 And, again, we think it's very important that the jury

1 understand that that alleged predicate only applies to public  
2 officials, because it does. And as currently written, that is  
3 not -- that is not clear. We think the jury could be confused  
4 by that. And so we join in Mr. Householder's objections.

5 THE COURT: Very well. Mr. Singer?

6 MR. SINGER: Your Honor, the first point I think is  
7 well taken. The other bribery statute, public official  
8 bribery statute do make clear that the defendant or  
9 conspirator involved is a public official.

10 I don't know that just including public servant in the  
11 first element necessarily addresses that, although public  
12 servant is defined and then referenced in the third element.  
13 So the Court could add an element that the defendant or  
14 conspirator is a public servant. That's one way to address  
15 it.

16 Although I do think the third element makes clear that  
17 the discharge of the duties must be as a public servant,  
18 making clear that whoever's involved in this must be a public  
19 servant.

20 As to the other argument raised by the defendants, we've  
21 addressed this. We briefed it in our arguments, and the Ohio  
22 statute is a predicate of racketeering and the law relating to  
23 the -- the statute and Ohio law is what governs.

24 THE COURT: I would think if we were headed in that  
25 direction, it should say, quote, "public official who is

1       either a defendant or a conspirator."

2               What's Mr. Long make of that?

3               MR. LONG: Your Honor, I think we would be agreeable  
4       to that, that language.

5               THE COURT: And Mr. Nick on behalf of  
6       Mr. Householder?

7               MR. OLESKI: That would be acceptable to  
8       Mr. Householder, Judge.

9               THE COURT: Very well. I would note that they are  
10      not charged with the Ohio bribery statute. So whether anyone  
11      could have actually been convicted is irrelevant. Be that as  
12      it may, you guys have reached an agreement, and I am prepared  
13      to proceed to page 40. Is there anything on page 40?

14              Page 41?

15              MR. LONG: Pardon me, Your Honor. Page 40.

16              THE COURT: Yes.

17              MR. LONG: Your Honor, we had proposed language both  
18      over the weekend and in our previously submitted proposed jury  
19      instructions and in our objections to the government's  
20      proposed jury instructions that the Travel Act requires  
21      knowledge of the crossing of state lines, and that that is an  
22      element within the Sixth Circuit. I understand the government  
23      has responded on that legal issue, that the Sixth Circuit  
24      cases which address this very issue that say that there is a  
25      distinction between a statute that identifies a facility in



1 interstate commerce, which the Travel Act requires, versus  
2 statutes that require the use of a facility of interstate  
3 commerce.

4 The Sixth Circuit has routinely held that statutes,  
5 including the Travel Act, that require that it use a facility  
6 in interstate commerce, or the actual crossing of state lines.  
7 So the Sixth Circuit has a number of cases. They talk about  
8 the use of telephones or cell phones where the defendant had,  
9 say, called a person in another state and knew that that  
10 person was in another state. And so that was sufficient for  
11 the Travel Act, to cross state lines.

12 So we're requesting that the Court include in the  
13 instructions that the defendant had knowledge that the use of  
14 the facility in interstate commerce crossed state lines.

15 Your Honor, we also are going to renew our objections  
16 that were first raised in our motion to strike that the  
17 predicate here, Ohio's misdemeanor infiltration statute, is an  
18 improper --

19 THE COURT: You know, you have argued these. I've  
20 ruled. You can stand on your objections and the like.

21 MR. LONG: I just wanted for the record, Your Honor,  
22 to make those objections clear, that we're objecting based on  
23 those arguments about whether the infiltration statute is a --

24 THE COURT: It is of record in the motion.

25 MR. LONG: Thank you, Your Honor.

1 THE COURT: I denied the motion.

2 Anything further on page 40?

3 MR. OLESKI: Judge, just for the record, Defendant  
4 Householder joins Defendant Borges's objections.

5 THE COURT: Very well. Element 1 says "knowingly  
6 used," and we're not using the "facility in interstate  
7 commerce" language.

8 Page 41?

9 MR. OLESKI: Yes, Your Honor.

10 THE COURT: Yes.

11 MR. OLESKI: Just a brief post-edit to this  
12 definition of "specified unlawful activity"?

13 THE COURT: Yes.

14 MR. OLESKI: It currently reads --

15 THE COURT: I know what it reads. Go ahead.

16 MR. OLESKI: I would propose changing "means any  
17 racketeering activity" to "means some racketeering activity."  
18 Given that not all of the racketeering activities the Court  
19 previously defined generated proceeds. We think that "some"  
20 is more accurate than "any."

21 THE COURT: The government?

22 MR. SINGER: No objection to that, Your Honor.

23 THE COURT: Mr. Long?

24 MR. LONG: We join in that modification, Your Honor.

25 THE COURT: All right. Page 42? Page 43? Page 44,

1 which sheet is blank. Page 45?

2 Page 46? As to venue, do we need to give an instruction?  
3 It's stipulated, is it not? What's the parties' positions?

4 Go ahead on behalf of Mr. Householder.

5 MR. OLESKI: I didn't mean to jump in first, but we  
6 don't think that a venue instruction is necessary given the  
7 stipulation.

8 THE COURT: Mr. Long?

9 MR. LONG: We agree.

10 MR. SINGER: We do think it is -- should be  
11 included, Your Honor. The jury has to find that there is  
12 venue. The parties have stipulated to it. There is no  
13 problem with including it in there. We think it should be in  
14 there.

15 THE COURT: Okay. Page 47? Page 48?

16 MR. OLESKI: Judge, I'm sorry. Going back to page  
17 46.

18 THE COURT: Yes.

19 MR. OLESKI: I just -- I'm sorry. I'm on page 47.  
20 I'm looking at the clean copy, Judge.

21 THE COURT: Okay.

22 MR. OLESKI: The Additional Instructions section.

23 THE COURT: Yes. I've got it in front of me.

24 MR. OLESKI: We would propose that the Court add a  
25 fourth bullet point in that instruction that would read as

1 follows: "Given the various testimony you have heard  
2 regarding campaign contributions and campaign finance law  
3 during the course of the trial, the Court further instructs  
4 you that the indictment in this case does not charge the  
5 defendants with violating any campaign finance law."

6 I understand that the Court rejected that instruction,  
7 but we think, especially given some of the cross-examination  
8 of my client, that such an instruction would be appropriate.

9 THE COURT: The Court declines to add the additional  
10 instruction about campaign finance law. There is no  
11 suggestion in these instructions that campaign finance law is  
12 at issue, and simply adding an undefined area of law that is  
13 not an issue does not make any clarity for the jury.

14 Page 48? Concise.

15 49? 50? 51?

16 52? The testimony of a witness under grant of immunity.  
17 The Court intends to exclude it because they weren't -- the  
18 agreements weren't mentioned. Anybody need to be heard on  
19 page 52 being excluded?

20 MR. OLESKI: We agree with the Court, Judge.

21 THE COURT: Very well. Mr. Long, do you want to  
22 join in and agree with the Court?

23 MR. LONG: We sure do, Your Honor.

24 THE COURT: Very well. The government as well?

25 MR. SINGER: Yes, Your Honor.

1 THE COURT: It's unanimous.

2 Page 53, any objections?

3 MR. OLESKI: No, Judge.

4 THE COURT: Page 54? Page 55?

5 MR. OLESKI: Judge, we do object to this  
6 instruction. I know Mr. Klaffky was cross-examined about  
7 statements that he made to the news media. I don't think that  
8 was actually impeachment. I think that Mr. Klaffky actually  
9 agreed that he made those statements. So I don't think he was  
10 impeached with them, and so we would ask that this instruction  
11 be omitted.

12 THE COURT: Mr. Long?

13 MR. LONG: We agree that this instruction should be  
14 omitted. Thank you.

15 THE COURT: And the government?

16 MR. SINGER: I actually do think he was impeached.  
17 Your Honor. He didn't say it at the start and then he was  
18 only -- he ultimately agreed with it after being  
19 cross-examined on a prior statement. So his prior testimony  
20 he did not include this. So his prior testimony was  
21 impeached, although he ultimately agreed with what he was  
22 impeached with.

23 THE COURT: Well, he was impeached. I am happy to  
24 look at the transcript.

25 Page 56?

1 MR. SINGER: Yes, Your Honor. The government --

2 THE COURT: And when I say "I'll look at the  
3 transcript," that would be I will look at the transcript  
4 again. Go ahead.

5 MR. SINGER: The government presented the testimony  
6 of Josh Altic who was an expert in ballot referendum.

7 THE COURT: What's the name?

8 MR. SINGER: Josh Altic.

9 THE COURT: I've got Josh.

10 MR. SINGER: A-L-T-I-C.

11 THE COURT: And you think that that name should be  
12 added to Number 1?

13 MR. SINGER: Yes, Your Honor. He provided the  
14 opinion testimony relating to ballot referendum.

15 THE COURT: And Mr. Householder's reaction?

16 MR. OLESKI: We agree, Judge.

17 THE COURT: Mr. Long?

18 MR. LONG: We agree.

19 THE COURT: Very well. 57? No response.

20 58? 59?

21 Go ahead.

22 MR. OLESKI: Yes, Judge. We object to this  
23 instruction. This is a pattern instruction from -- that the  
24 government adopted from the Seventh Circuit's instructions,  
25 and under the Seventh Circuit's -- under the Seventh Circuit's

1 instructions, this instruction is not to be given in any case  
2 where there is undercover or deceptive techniques used.

3       Instead, the committee commentary to the Seventh Circuit  
4 instruction states that it is -- that this instruction, quote,  
5 "is intended for use only in the rare case in which  
6 questioning or argument or a statement during jury selection  
7 or some other circumstance arising or existing during trial  
8 suggests the impropriety of such techniques."

9       I don't think that either Defendant Householder or  
10 Defendant Borges suggested either through questioning or  
11 argument that it's improper for the government to use  
12 undercover agents, use deceptive investigative techniques. So  
13 we would ask that the Court exclude this instruction.

14       THE COURT: Mr. Long wish to join in that objection?

15       MR. LONG: We do, Your Honor.

16       THE COURT: And the government's response?

17       MS. GLATFELTER: Yes, Your Honor. During --  
18 specifically during Tyler Fehrman's testimony, counsel for  
19 Borges questioned whether things he said during the  
20 conversations were true or not. And that leaves a  
21 misimpression with the jury that there is something wrong with  
22 these techniques. And that's why this was included initially.  
23 I am not recalling at the moment whether the same type of  
24 cross with the undercover agents.

25       Agent Wetzel was also questioned about the truth of what

1 Mr. Fehrman was saying to Borges during the examination, and  
2 so I think that rises to providing the jury with information  
3 that these techniques are proper and that there is nothing  
4 wrong with using these types of techniques.

5 THE COURT: Very well. Last word.

6 MR. OLESKI: I don't have -- I don't have a specific  
7 recollection of what, you know, what Agent Wetzel was  
8 cross-examined about. However, I would note that the Seventh  
9 Circuit's pattern instruction commentary notes that one of the  
10 reasons why it might be improper to give this instruction,  
11 number one, because it singles out this aspect of the case,  
12 and, number two is that it might undercut, quoting here,  
13 appropriate argument that a witness's deceptive act may be  
14 considered in assessing the witness's credibility." So we  
15 would just ask that the Court exclude that instruction.

16 THE COURT: Yes?

17 MS. GLATFELTER: I just would point out that I think  
18 that argument is misleading because if they are going to argue  
19 that Tyler Fehrman's credibility is on the line regarding the  
20 recordings, that makes no sense. The recordings are the  
21 evidence. So his credibility is not judged as to what is on  
22 those recordings or not. He could have not testified in this  
23 case.

24 And so arguing about the statements that he made on the  
25 recording I don't think bear on his credibility. I don't



1 understand that argument.

2 THE COURT: Very well. What if I add saying  
3 something to the effect, "You should otherwise judge the  
4 credibility of the witnesses as I previously instructed"?  
5 Does defense make anything of that, or do you simply object to  
6 the entire instruction?

7 MR. OLESKI: I think that -- I think that the  
8 Court's proposal goes a long way to addressing my concern.  
9 However, I will stand on my objection.

10 THE COURT: All right. Mr. Long?

11 MR. LONG: Same, Your Honor.

12 THE COURT: Very well. Last word, government.

13 MS. GLATFELTER: One moment, Your Honor.

14 THE COURT: Yes.

15 (Pause.)

16 MS. GLATFELTER: I think, if I wasn't clear before,  
17 what I was trying to convey is that the defendants are trying  
18 to impeach Mr. Fehrman's testimony with a legal operation and  
19 what he was saying during a deceptive operation, which is  
20 perfectly permissible. Whether it was an undercover agent,  
21 whether it was an informant, law enforcement is allowed to use  
22 those techniques. And so somehow to try to impeach  
23 Mr. Fehrman in argument by saying what he said on the tape  
24 wasn't true and using that to impeach his in-court sworn  
25 testimony is not a fair inference. And the jury should be

1 instructed that those deceptive techniques are legal, and they  
2 shouldn't be held against Mr. Fehrman.

3 If they want to attack what he said under oath or other  
4 parts, then, fine. And you can -- the Court, you know, could  
5 instruct the jury as it just said that they can use the  
6 Court's other instructions on credibility to do so. But it  
7 would be improper to -- for the defendants to argue that he  
8 should be found not credible based on things he said on tape.  
9 All right. Thank you, Your Honor.

10 THE COURT: Very well. That's why the Court's  
11 proposing to say basically judge the credibility of the  
12 witnesses as I have instructed, that the investigative  
13 techniques are not improper.

14 I'm going to work on it. I understand.

15 Ms. Frankian, can you capture those comments on this page  
16 as reflected before me?

17 Page 60? Nothing on page 60?

18 Page 61? Page 62? Page 63? Page 64? Page 65? Page  
19 66? Page 67? Page 68?

20 Are we not providing the synced audio-video recordings?

21 MS. GLATFELTER: Your Honor, it was not admitted.  
22 It was as a demonstrative. I think if there were a question  
23 and the jury wanted to hear that again, they could come in the  
24 courtroom and we could play it, but we didn't anticipate it  
25 going back as an exhibit.

1 But both the video and audio are admitted separately.

2 THE COURT: Okay. Thank you. I thought it was  
3 going to be provided.

4 Page 65? Page 66? Page 67? 68? 69? 70? 71? 72?

5 I've been through each page. Is there more you want to  
6 bring to my attention? First the government.

7 MR. SINGER: No, Your Honor.

8 THE COURT: Mr. --

9 MR. OLESKI: Oleski.

10 THE COURT: That's what I said. Go ahead.

11 MR. OLESKI: That's what I heard, Judge.

12 I have two things. One, I want to go back and just make  
13 sure that I am preserving an objection, and then I have got a  
14 question for the Court.

15 THE COURT: You get -- go ahead.

16 MR. OLESKI: On page 32 of the Court's instructions,  
17 this is the honest services fraud instruction, the Court  
18 defines "thing of value." We had proposed that in addition to  
19 the Court's instruction that the Court also include the  
20 following -- and I apologize, this is quite lengthy, but the  
21 Court instruct that after defining "thing of value," that the  
22 Court instruct, "That said, while a campaign contribution or a  
23 political contribution to a 501(c)(4) organization could be a  
24 thing of value for purposes of establishing a bribe, not all  
25 political contributions are bribes. As a general matter,

1 political contributions are a legitimate part of our system of  
2 privately financed elections. Absent an explicit quid pro quo  
3 agreement, donors are free to offer and public officials are  
4 free to accept donations that are motivated by a generalized  
5 hope that the donation may result in some form of favorable  
6 treatment. Likewise, a public official is free to solicit or  
7 accept contributions even from persons who have business  
8 pending before the public official.

9 "Moreover, there is nothing inherently wrongful with a  
10 public official taking official acts that advance the  
11 interests of the contributor even if those official acts occur  
12 shortly before or after the public official solicits or  
13 receives a contribution.

14 "But if this public official has entered an explicit quid  
15 pro quo agreement, as that term was defined above, in  
16 soliciting or accepting such a contribution, or if the public  
17 official knows that the donor believes that the public  
18 official has entered such an agreement, then the contribution  
19 is a bribe. And in deciding whether an explicit quid pro quo  
20 agreement exists, you may, but are not required to, consider  
21 whether the closeness in time between the solicitation or  
22 acceptance of the contribution on the one hand and the  
23 official act on the other gives rise to an inference that such  
24 an agreement exists."

25 And that instruction comes from Judge Cole's instructions

1 in the *Sittenfeld* case. I understand that the Court did not  
2 include that, but just wanted to make sure that I am  
3 preserving that for the record.

4 THE COURT: Very well. Every part of what you said  
5 is already stated somewhere or another elsewhere in the  
6 instructions.

7 Go ahead.

8 MR. OLESKI: Understood. And then my question,  
9 Judge, is whether for the verdict form --

10 THE COURT: Go ahead.

11 MR. OLESKI: We had proposed in our proposed verdict  
12 forms that the Court include essentially an interrogatory  
13 which the jury would have to answer which of the predicate  
14 acts or the racketeering acts were that they found that the  
15 defendants agreed that they would commit or that one of the --  
16 one of their co-conspirators would have committed. I am just  
17 inquiring as to whether the Court intends to include that on  
18 the verdict form?

19 THE COURT: I do not.

20 MR. OLESKI: Then for the reasons we stated in our  
21 objections to the government's proposed instructions, we would  
22 object to the Court not including that.

23 THE COURT: Very well.

24 Mr. Long joins in that objection?

25 MR. LONG: I do, Your Honor, but I also had a

1 question.

2 THE COURT: Let me just see if I've exhausted  
3 Mr. Householder's counsel's --

4 MR. LONG: Thank you, Your Honor.

5 THE COURT: -- comments.

6 MR. OLESKI: And I guess just for purposes of the  
7 record, we would just -- we proposed instructions, and to the  
8 extent the Court's instructions differ from our instructions,  
9 we object.

10 THE COURT: Very well. Mr. Long.

11 MR. LONG: For the record, Your Honor, we too would  
12 preserve all objections that were raised in our proposed  
13 instructions and our objections to the government's that are  
14 not reflected in the Court's instructions, just for the  
15 record.

16 But my question, Judge, because it's just not clear to  
17 me, are there going to be -- is there going to be a verdict  
18 form for Mr. Householder and a separate verdict form for  
19 Mr. Borges? We would request separate verdict forms.

20 THE COURT: Yes, they are going to be separate  
21 verdict forms for the separate defendants.

22 MR. LONG: Thank you, Judge.

23 THE COURT: Very well. Of course.

24 Anything further from the government?

25 MR. SINGER: Your Honor, as to Defendant

1 Householder's counsel's remarks, these issues have been  
2 addressed and briefed. The government rests on that unless  
3 the Court has any questions. Other than that, nothing else  
4 from the government, Your Honor.

5 THE COURT: Very well. Does anybody need to be  
6 heard further before we adjourn, I consider what you have  
7 presented, and we reduce it to final jury instructions that we  
8 hope to read to the jury at or around 2 p.m.

9 From the government?

10 MS. GLATFELTER: No, nothing on the instructions.  
11 Just logistically, will the Court notify us about the time, or  
12 should we all be back here at 1:45?

13 THE COURT: The jury is supposed to be here well  
14 before 2.

15 MS. GLATFELTER: Thank you, Your Honor.

16 THE COURT: So we are planning to start at 2. If  
17 we're late, it's because you guys talk too much.

18 Is there anything --

19 MR. BRADLEY: Not me, Judge.

20 THE COURT: I was just going to make a record of  
21 that. And you laughed at some of my jokes.

22 Anything further on behalf of Mr. Borges?

23 MR. LONG: No, Your Honor. Thank you.

24 THE COURT: We're in recess until 2 p.m.

25 THE COURTROOM DEPUTY: All rise. Court is in

1 recess.

2 (Recess from 10:49 a.m. until 2:30 p.m.)

3 THE COURTROOM DEPUTY: All rise. This United States  
4 District Court for the Southern District of Ohio is now in  
5 session. The Honorable Timothy S. Black, District Judge,  
6 presiding.

7 THE COURT: Thank you. Please be seated.

8 The government's full complement is present.  
9 Mr. Householder and three of his lawyers are here. Mr. Marein  
10 was excused at his own request. Mr. Borges is here with both  
11 counsel.

12 I think we're ready. Before I get the jury, I want to  
13 talk about tomorrow timing-wise. I want to get the closing  
14 arguments in and the matter to the jury by the end of the  
15 workday on tomorrow. How long does the government estimate  
16 its closing will be?

17 MR. SINGER: Your Honor, I believe it should be  
18 around two hours.

19 THE COURT: And then how much for rebuttal?

20 MR. SINGER: Half hour, 45 minutes, Your Honor.

21 THE COURT: A half hour sounds reasonable.

22 On behalf of Mr. Householder, how long do you expect  
23 closing to be?

24 MR. BRADLEY: No more than two and a half hours.

25 THE COURT: Very well. And Mr. Borges's counsel?



1 MR. SCHNEIDER: Roughly an hour and a half.

2 THE COURT: Very well. The problem is, if we start  
3 early and the government finishes its two hours, then  
4 Householder's counsel's not going to have uninterrupted two  
5 and a half hours. Does that cause you pause, sir?

6 MR. BRADLEY: Yes, is the short answer.

7 THE COURT: All right. So I would propose -- you  
8 may be seated.

9 We'll do the government's two hours. We'll then break  
10 for an early lunch. We'll come back. You will do your two to  
11 two and a half hours on behalf of Mr. Householder. We'll take  
12 a short break. Then we will move to Mr. Borges.

13 Do you honestly think that Mr. Borges' closing is going  
14 to be an hour and a half?

15 MR. SCHNEIDER: I was trying to give myself that  
16 opportunity, but it will probably be less.

17 THE COURT: I'm sorry?

18 MR. SCHNEIDER: It will be less.

19 THE COURT: An hour or so.

20 MR. SCHNEIDER: Hour, hour and 15.

21 THE COURT: All right. Those are the estimates.  
22 I'm just trying to get it done. I don't think coming in at 9  
23 accomplishes anything given that we are going to have to break  
24 for the government. I would propose that we begin at 9:30 and  
25 that the government do its two hours to 11:30. If it's a

1 little longer, it's a little longer. If it's a little  
2 shorter, it's a little shorter. 11:30 to 12:30 we break for  
3 lunch. They need a break after two hours. We'd come back at  
4 12:30, 12:35. A couple hours takes us to 3:00. We'd break  
5 for 15 minutes, come back at 3:15 to 4:15 or 4:30 for  
6 Mr. Borges. We'd take a short, 15-minute break, 4:30 to 4:45,  
7 and then we'd have the government's rebuttal. If it were 15  
8 minutes we'd get the jury -- get the case to the jury at 5, a  
9 little after 5 if we take a break, which we will.

10 Anybody want to be heard on timing? The government?

11 MR. SINGER: No, Your Honor.

12 THE COURT: Mr. Householder's counsel?

13 MR. BRADLEY: No, Your Honor.

14 THE COURT: Mr. Borges's counsel?

15 MR. SCHNEIDER: I think that's fine. We're fine  
16 with that.

17 THE COURT: Should we start at 9 to give you some  
18 leeway? It's just going to be more reasonable. If we have  
19 the estimate, the better we can plan.

20 MR. SINGER: I mean from the government's  
21 perspective, if we start at 9 and then there's -- it gives us  
22 more room to move flexibility-wise if it goes a little longer.  
23 And if it doesn't, then we can -- I don't think there is any  
24 harm in moving lunch earlier and then it buys us more time at  
25 the end of the day.

1 THE COURT: 11 o'clock lunch?

2 MR. SINGER: I sometimes eat lunch at 11, Your  
3 Honor.

4 THE COURT: I didn't hear you.

5 MR. SINGER: I sometimes eat lunch at 11.

6 THE COURT: That's a credit to you.

7 Let's get the jury. We ready for the jury from the  
8 government?

9 MR. SINGER: Yes, Judge.

10 THE COURT: From Mr. Householder's?

11 MR. BRADLEY: Yes, Judge.

12 THE COURT: From Mr. Borges's?

13 MR. SCHNEIDER: Yes, Judge.

14 THE COURT: Let's get the jury.

15 THE COURTROOM DEPUTY: All rise for the jury.

16 (Jury entered the courtroom at 2:04 p.m.)

17 THE COURT: You may all be seated. Thank you. The  
18 14 Members of the Jury have joined us in the courtroom on the  
19 record. Good afternoon to all of you.

20 RESPONSE BY ALL: Good afternoon.

21 THE COURT: I would say happy Monday, but it sounds  
22 like an oxymoron.

23 I've been promising to instruct you on the law, and  
24 that's what's going to happen this afternoon. I'm going to  
25 provide you and have provided each of you with a written

1 package of what I'm going to read. Some people do well  
2 reading. Some people do well listening. Some people do well  
3 with both. I do well with both. But I'm required by law to  
4 read it out loud to you. The last time somebody read out loud  
5 to me it was my mother trying to get me to go to sleep.

6 Hang in there with me. We'll get through these  
7 instructions. We'll send you home for the day. You'll come  
8 back Tuesday, such that you are able to be in the courtroom by  
9 9 a.m., which means at the very least -- and you can talk with  
10 Jen -- you'll need to be at your spot by 8:45 at the very  
11 latest so we can get you in the courtroom at 9.

12 Tomorrow beginning at 9 we'll hear closing argument.  
13 It's not evidence. It's flat out argument. It's designed to  
14 assist you. The government will go first, followed by  
15 Mr. Householder's client -- followed by Mr. Householder's  
16 counsel, followed by Mr. Borges's counsel, and then the  
17 government gets the last word, called rebuttal.

18 Jury instructions. You can pull out your package, read  
19 along with me.

20 There's a title page. There are three preliminary pages  
21 of Table of Contents referencing the pages in the document  
22 where matters are presented. And these are the instructions.

23 Just the General Rules, Introduction.

24 Members of the Jury, now it's time for me to instruct you  
25 about the law that you must follow in deciding this case.

1 I'll start by explaining your duties and the general  
2 rules that apply in every criminal case.

3 Then I will explain the elements, or parts, of the crime  
4 that the defendants are accused of committing.

5 Then I will state the defendants' positions.

6 Then I will explain some rules that you must use in  
7 evaluating particular testimony and evidence.

8 And last, I will explain the rules that you must follow  
9 during your deliberations in the jury room, and the possible  
10 verdicts that you may return.

11 Please listen very carefully to everything I say.

12 You'll have this copy, each of you, this copy of the  
13 instructions with you in the jury room tomorrow.

14 Jurors' Duties.

15 You have two main duties as jurors. First, you must  
16 decide what the facts are from the evidence that you saw and  
17 heard here in court. Deciding what the facts are is your job,  
18 not mine, and nothing that I've said or done during this trial  
19 was meant to influence your decision about the facts in any  
20 way.

21 Second, your duty is to take the law that I give you,  
22 apply it to the facts, and decide if the government has proved  
23 that either, both, or neither of the defendants are guilty  
24 beyond a reasonable doubt. It's my job to instruct you about  
25 the law, and you are bound by the oath that you took at the

1 beginning of the trial to follow the instructions that I give  
2 you, even if you personally disagree with them. This includes  
3 the instructions that I gave you before and during the trial,  
4 and these instructions. All the instructions are important,  
5 and you should consider them together as a whole.

6 The lawyers may talk about the law during their  
7 arguments. But if what they say is different from what I say,  
8 you must follow what I say. What I say about the law  
9 controls.

10 Perform these duties fairly. Do not let any bias,  
11 sympathy, or prejudice that you may feel toward one side or  
12 the other influence your decision in any way.

13 As to improper considerations, your verdict must be based  
14 solely upon the evidence developed at trial or the lack of  
15 evidence.

16 In reaching your decision as to whether the government  
17 sustained its burden of proof, it would be improper for you to  
18 consider any personal feelings you may have about the  
19 defendants. All defendants are entitled to the presumption of  
20 innocence, and the government has the burden of proof, as I  
21 will discuss again in a moment.

22 It would be equally improper for you to allow any  
23 personal feelings you might have about the nature of the crime  
24 charged to interfere with your decision-making process.

25 To repeat, your verdict must be based exclusively upon

1 the evidence or the lack of evidence in the case.

2 As to the presumption of innocence, burden of proof, and  
3 reasonable doubt, as you know, both defendants pleaded not  
4 guilty to the crime charged in the indictment. The indictment  
5 is not any evidence at all of guilt. It is just the formal  
6 way that the government tells the defendants what crime they  
7 are accused of committing. It does not even raise any  
8 suspicion of guilt.

9 Instead, the defendants start the trial with a clean  
10 slate, with no evidence at all against either of them, and the  
11 law presumes that they are both innocent. This presumption of  
12 innocence stays with both defendants unless the government  
13 presents evidence here in court that overcomes the presumption  
14 and convinces you beyond a reasonable doubt that either one or  
15 both of the defendants are guilty.

16 This means that the defendants have no obligation to  
17 present any evidence at all, or to prove to you in any way  
18 that they are innocent. It is up to the government to prove  
19 that the defendants are guilty, and this burden stays on the  
20 government from start to finish. Unless the government  
21 convinces you beyond a reasonable doubt that a particular  
22 defendant is guilty, you must find that particular defendant  
23 not guilty.

24 The government must prove every element of the crime  
25 charged beyond a reasonable doubt. Proof beyond a reasonable

1       doubt does not mean proof beyond all possible doubt. Possible  
2       doubts or doubts based purely on speculation are not  
3       reasonable doubts. A reasonable doubt is a doubt based on  
4       reason and common sense. It may arise from the evidence, the  
5       lack of evidence, or the nature of the evidence.

6               Proof beyond a reasonable doubt means proof which is so  
7       convincing that you would not hesitate to rely and act on it  
8       in making the most important decisions in your own lives. If  
9       you're convinced that the government has proved a particular  
10      defendant guilty beyond a reasonable doubt, say so by  
11      returning a guilty verdict as to that particular defendant.  
12      If you are not convinced, say so by returning a not guilty  
13      verdict.

14             As to evidence defined, you must make your decision based  
15      only on the evidence that you saw and heard here in court. Do  
16      not let rumors, suspicions, or anything else that you may have  
17      seen or heard outside of court influence your decision in any  
18      way.

19             The evidence in this case includes only what the  
20      witnesses said while they were testifying under oath, the  
21      exhibits that I have allowed into evidence and will go to the  
22      jury room with you, and the stipulations that the lawyers have  
23      agreed to, which I will reflect for you.

24             Nothing else is evidence. The lawyers' statements and  
25      arguments are not evidence. Their questions and objections



1 are not evidence. My legal rulings are not evidence. And my  
2 comments and questions are not evidence.

3 During the trial I did not let you hear the answers to  
4 some of the questions that the lawyers may have asked. I also  
5 ruled that you could not see some of the evidence that the  
6 lawyers wanted you to see, and I struck some things from the  
7 record. You must completely ignore all of those things --  
8 these things. Do not even think about them. Do not speculate  
9 about what a witness might have said or what an exhibit might  
10 have shown. These things are not evidence, and you are bound  
11 by your oath not to let them influence your decision in any  
12 way.

13 Make your decision based only on the evidence, as I have  
14 defined it here, and nothing else.

15 Terms of Consideration of Evidence. You are only -- you  
16 are to consider only the evidence in the case, and you should  
17 use your common sense in weighing the evidence. Consider the  
18 evidence in light of your everyday experience with people and  
19 events, and give it whatever weight you believe it deserves.  
20 If your experience tells you that certain evidence reasonably  
21 leads to a conclusion, you are free to reach that conclusion.

22 In our lives, we often look at one fact and conclude from  
23 it that another fact exists. In law, we call this an  
24 "inference." You are allowed to make reasonable inferences,  
25 unless otherwise instructed. Any inferences you make must be

1 reasonable and must be based on the evidence in the case.

2 The existence of an inference does not change or shift  
3 the burden of proof from the government to the defendants.

4 As to stipulations, that means agreements. The  
5 government and the defendants have agreed, or stipulated, as  
6 to certain facts. Therefore, you must accept the stipulated  
7 facts as proved.

8 I will tell you those stipulated facts at the relevant  
9 point in time during the course of these instructions.

10 As to direct and circumstantial evidence, I'm going to  
11 remind you of the difference between "direct evidence" and  
12 "circumstantial evidence."

13 Direct evidence is simply evidence like the testimony of  
14 an eyewitness which, if you believe it, directly proves a  
15 fact. If a witness testified that she saw it raining outside,  
16 and you believed her, that would be direct evidence that it  
17 was raining.

18 Circumstantial evidence is simply a chain of  
19 circumstances that indirectly prove a fact. If someone walked  
20 into the courtroom wearing a raincoat covered with drops of  
21 water and carrying a wet umbrella, that would be  
22 circumstantial evidence from which you could conclude that it  
23 was raining.

24 It is your job to decide how much evidence to give the  
25 direct and circumstantial evidence. The law makes no

1 distinction between the weight that you should give to either  
2 one, nor does it say that one is any better evidence than the  
3 other. You should consider all the evidence, both direct and  
4 circumstantial, and give it whatever weight you believe it  
5 deserves.

6 As to credibility of witnesses, another part of your job  
7 as jurors is to decide how credible or believable each witness  
8 was. This is your job, not mine. It's up to you to decide if  
9 a witness's testimony was believable and how much weight you  
10 think it deserves. You are free to believe everything that a  
11 witness said, or only part of it, or none of it at all. But  
12 you should act reasonably and carefully in making these  
13 decisions.

14 Let me suggest some things for you to consider in  
15 evaluating each witness's testimony.

16 Ask yourself if the witness was able to clearly see or  
17 hear the events. Sometimes, even an honest witness may not  
18 have been able to see or hear what was happening, and may make  
19 a mistake.

20 Ask yourself how good the witness's memory seemed to be.  
21 Did the witness seem able to accurately remember what  
22 happened?

23 Ask yourself if there was anything else that may have  
24 interfered with the witness's ability to perceive or remember  
25 the events.

1           Ask yourself how the witness acted while testifying. Did  
2           the witness appear to be honest? Or did the witness appear to  
3           be lying?

4           Ask yourself if the witness had any relationship to the  
5           government or to either defendant, or anything to gain or lose  
6           from the case that might influence that witness's testimony.  
7           Ask yourselves if the witness had any bias, or prejudice, or  
8           reason for testifying that might cause the witness to lie or  
9           to slant the testimony in favor of one side or the other.

10          Ask yourself if the witness testified inconsistently  
11          while on the witness stand, or if the witness said or did  
12          something, or failed to say or do something, at any other time  
13          that is inconsistent with what the witness said while  
14          testifying. If you believe that the witness was inconsistent,  
15          ask yourself if this makes the witness's testimony less  
16          believable. Sometimes it may; other times it may not.  
17          Consider whether the inconsistency was about something  
18          important, or about some unimportant detail. Ask yourselves  
19          if it seemed like an innocent mistake or if it seemed  
20          deliberate.

21          And ask yourself how believable the witness's testimony  
22          was in light of all the other evidence. Was the witness's  
23          testimony supported or contradicted by other evidence that you  
24          found believable? If you believe that a witness's testimony  
25          was contradicted by other evidence, remember that people

1 sometimes forget things, and that even two honest people who  
2 witness the same event may not describe it exactly the same  
3 way.

4       These are only some of the -- these are only some of the  
5 things that you may consider in deciding how believable each  
6 witness was. You may also consider other things that you  
7 think shed some light on the witness's believability. Use  
8 your common sense and your everyday experience in dealing with  
9 other people. And then decide what testimony you believe, and  
10 how much weight you think it deserves.

11       As to the number of witnesses, sometimes jurors wonder if  
12 the number of witnesses who testified makes any difference.

13       Do not make any decisions based only on the number of  
14 witnesses who testified. What is more important is how  
15 believable the witnesses were and how much weight you think  
16 their testimony deserves. Concentrate on that and not the  
17 numbers.

18       As to lawyers' objections, this is another general  
19 subject that I want to talk to you about before I begin  
20 explaining the elements of the crime charged.

21       The lawyers for both sides -- all sides objected to some  
22 of the things that were said or done during the trial. Do not  
23 hold that against either side. The lawyers have a duty to  
24 object whenever they think that something is not permitted by  
25 the rules of evidence. Those rules are designed to make sure

1       that both sides receive a fair trial.

2               And do not interpret my rulings on their objections as  
3       any indication of how I think the case should be decided. My  
4       rulings were based on the rules of evidence, not on how I feel  
5       about the case. Remember that your decision must be based  
6       only on the evidence that you saw and heard here in court.

7               As to defining the crime. I have concluded the part of  
8       my instruction explaining your duties and the general rules  
9       that apply in every criminal case. In a moment, I'll explain  
10      the elements of the crime that the defendants are accused of  
11      committing.

12              But before I do that, I want to emphasize that the  
13      defendants are only on trial for the particular crime charged  
14      in the indictment. Your job is limited to deciding whether  
15      the government has proved the crime charged.

16              Also, keep in mind that whether anyone else should be  
17      prosecuted and convicted for this crime is not a proper matter  
18      for you to consider. The possible guilt of others is no  
19      defense to a criminal charge. Your job is to decide if the  
20      government has proved either or both of these defendants  
21      guilty. However, as I will explain shortly, because the  
22      defendants in this case are charged with a conspiracy, you  
23      will need to consider the involvement of others for that  
24      limited purpose.

25              As to two defendants charged with a single crime,

1 separate consideration. The defendants, Larry Householder and  
2 Matthew Borges, have been charged with one crime. In our  
3 system of justice, guilt or innocence is personal and  
4 individual. It is your duty to separately consider the  
5 evidence against each defendant, and to return a separate  
6 verdict for each of them. For each defendant, you must decide  
7 whether the government has presented evidence proving that  
8 that particular defendant is guilty beyond a reasonable doubt.

9 Your decision on whether -- on one defendant, whether  
10 it's guilty or not guilty, should not influence your decision  
11 on the other defendant.

12 Now, as to the charged offense, crime alleged. In this  
13 case, the defendants are each charged with conspiracy to  
14 commit an offense under the Racketeering Influenced and  
15 Corrupt Organizations Act. In short, I will refer to this  
16 offense going forward as RICO conspiracy.

17 The defendants deny the charge.

18 As to relevant dates, I want to first talk to you about  
19 the dates of the charged offense, as set forth in the  
20 indictment.

21 The indictment charges that the conspiracy began at least  
22 as early as 2016 and continued until July 2020. Generally,  
23 the government does not have to prove that a conspiracy  
24 existed on those exact dates or that the conspiracy lasted for  
25 that entire period of time. But the government must prove

1       that the conspiracy existed and existed reasonably close to  
2       those dates.

3             As to inferring requiring mental state. Next, I want to  
4       explain something about proving a defendant's state of mind.

5             Ordinarily, there is no way that a defendant's state of  
6       mind can be proved directly because no one can read another  
7       person's mind and tell what that person is thinking.

8             But a defendant's state of mind can be proved indirectly  
9       from the surrounding circumstances. This includes things like  
10      what the defendant said, what the defendant did, how the  
11      defendant acted, and any other facts or circumstances in  
12      evidence that show what was in the defendant's mind.

13            You may also consider the natural and probable results of  
14      any acts that the defendant knowingly did or did not do, and  
15      whether it's reasonable to conclude that the defendant  
16      intended those results. This, of course, is all for you to  
17      decide.

18            As to overview. The indictment charges the defendant  
19      with RICO conspiracy. That means the defendants are charged  
20      with conspiring to commit a RICO offense.

21            I will start by giving you a summary of the allegations.  
22      Keep in mind that the allegations are just that --  
23      allegations. That's what the government alleges or claims  
24      occurred.

25            Then I will instruct you on the elements of the RICO



1 conspiracy. In order to find either one or both defendants  
2 guilty of the offense charged, you must find that the  
3 government has proven each of these elements beyond a  
4 reasonable doubt as to that particular defendant.

5 I'll then give you additional instructions and  
6 definitions that are relevant to the charged offense.

7 Finally, I will provide you with instructions regarding  
8 certain evidence and the deliberation process.

9 RICO conspiracy. The indictment charges the defendants,  
10 Larry Householder and Matthew Borges, along with other named  
11 and unnamed individuals and entities, with RICO conspiracy, in  
12 violation of federal law.

13 The allegations include: The indictment alleges that  
14 beginning in 2016 and continuing until 2020, defendants, Larry  
15 Householder and Matthew Borges, along with other named and  
16 unnamed individuals and entities, constituted an enterprise.

17 The indictment alleges that the defendants, Larry  
18 Householder and Matthew Borges, along with the other named and  
19 unnamed individuals and entities, did knowingly and  
20 intentionally conspire with each other to conduct and  
21 participate directly or indirectly -- and indirectly in the  
22 conduct of the affairs of the enterprise through a pattern of  
23 racketeering activity.

24 The indictment alleges that the purpose of the enterprise  
25 was to grow defendant Larry Householder's political power, to

1     enrich the enterprise and its members and associates, and to  
2     conceal these activities from public exposure and potential  
3     prosecution. The indictment further alleges that as part of  
4     the conspiracy, the enterprise used Generation Now as a  
5     mechanism to receive and conceal from public scrutiny bribe  
6     payments for the benefit of enterprise members and associates.

7             In furtherance of the enterprise, the indictment alleges  
8     unlawful activities relating to Ohio's House Bill 6, HB 6.  
9     Specifically, HB 6 was proposed legislation introduced in the  
10    Ohio House of Representatives in April 2019, during defendant  
11    Householder's tenure as Speaker of the House of  
12    Representatives.

13            In sum, the indictment alleges that House Bill 6 was  
14    aimed at benefitting one of Ohio's public utility companies,  
15    FirstEnergy Corp., by offering a financial bailout to one of  
16    FirstEnergy Corp.'s struggling subsidiaries, FirstEnergy  
17    Solutions. The indictment alleges that the enterprise  
18    accepted tens of millions of dollars in bribes in exchange for  
19    providing the legislative action needed, House Bill 6, to keep  
20    FirstEnergy solvent and avoid closure of its nuclear power  
21    plants.

22            Specifically, the indictment alleges that from March 2017  
23    to March 2020, the enterprise agreed to accept and did accept  
24    millions of dollars in payments from FirstEnergy Corp. and/or  
25    FirstEnergy Solutions, which payments were intended to

1 influence and reward defendants Householder and Borges and  
2 other members of the enterprise in return for defendant  
3 Householder taking specific official action for the benefit of  
4 FirstEnergy Corp. and FirstEnergy Solutions, namely, to help  
5 enact legislation that would go into effect and save the  
6 operation of the nuclear plants.

7 The indictment further alleges that the enterprise  
8 ensured that the bribe payments were passed through and paid  
9 to and/or from various entities, including Generation Now, in  
10 an effort to conceal the nature of the payments.

11 The indictment also alleges that the enterprise used the  
12 bribe payments in furtherance of the conspiracy, including:  
13 to promote and ensure the passage of HB 6 and to defeat a  
14 referendum effort that could have resulted in the repeal of HB  
15 6, to support the campaigns of defendant Householder and  
16 others who would support HB 6, to pressure public officials to  
17 support HB 6, and to retain and gain political power on behalf  
18 of Defendant Householder, all with the intent to enrich and  
19 benefit, and to continue enriching and benefitting, the  
20 defendants, as well as other members and associates of the  
21 enterprise.

22 Those are the allegations on those two pages.

23 Now, as to the elements of the offense of the crime  
24 charged.

25 For you to find a defendant guilty of the offense of RICO

1 conspiracy, you must find that the government has proved each  
2 and every one of the following elements beyond a reasonable  
3 doubt:

4 First, that an "enterprise" existed.

5 That the enterprise was engaged in or its activities  
6 affected interstate commerce.

7 That the defendant was employed by or associated with the  
8 enterprise.

9 And fourth, that the defendant conspired to conduct or  
10 participate directly or indirectly, in the conduct of the  
11 enterprise's affairs through a pattern of racketeering  
12 activity.

13 You must consider each defendant independently to  
14 determine whether the elements of RICO conspiracy are met as  
15 to that defendant.

16 If you are convinced that the government has proved all  
17 of these elements beyond a reasonable doubt as to a particular  
18 defendant, say so by returning a guilty verdict as to that  
19 defendant. If you have a reasonable doubt about any one of  
20 these elements, then you must find that particular defendant  
21 not guilty.

22 Here are relevant definitions and instructions.

23 As to the first element, the first element that the  
24 government must prove beyond a reasonable doubt is the  
25 existence of an enterprise.

1           I'll now instruct you on what constitutes an enterprise  
2 under the law.

3           An enterprise includes any individual, partnership,  
4 corporation, association, or other legal entity, and any union  
5 or group of individuals associated in fact, although not a  
6 legal entity. In other words, an enterprise is an entity or a  
7 group of persons associated together for a common person --  
8 purpose of engaging in a course of conduct. Such a group need  
9 not have a hierarchical structure or a chain of command;  
10 decisions may be made on an ad hoc basis and by any number of  
11 methods -- by majority vote, consensus, show of strength, et  
12 cetera. Members of the group need not have fixed roles;  
13 different members may perform different roles at different  
14 times. The group does not need to have a name, regular  
15 meetings, dues, established rules and regulations,  
16 disciplinary procedures, or induction or initiation  
17 ceremonies. An enterprise is sufficiently structured if it  
18 includes at least three features: a purpose, relationships  
19 among those associated with the enterprise, and longevity  
20 sufficient to permit these associates to pursue the  
21 enterprise's purpose.

22           As to relevant definitions and instructions as to the  
23 second element. The second element that the government must  
24 prove beyond a reasonable doubt is that the enterprise was  
25 engaged in or its activities affected interstate commerce.

1           To meet the requirements of this element, the government  
2           needs to prove that the enterprise itself, as a whole, either  
3           was engaged in interstate commerce or that the activities of  
4           the enterprise affected interstate commerce.

5           The government does not need to prove that the defendant  
6           or any member of the enterprise knew that they were engaged in  
7           or affected interstate commerce.

8           "Interstate commerce" means commerce between any  
9           combination of states, territories, and possessions in the  
10          United States, including the District of Columbia.

11          An enterprise is "engaged in interstate commerce" when it  
12          is itself directly engaged in the production, distribution, or  
13          acquisition of services, money, goods, or other property in  
14          interstate commerce.

15          "Activities affected interstate commerce" means that the  
16          activities of the enterprise have an impact on or alter,  
17          interfere, or change the flow or movement of money, goods, or  
18          other property in interstate commerce. It does not matter if  
19          the effect on interstate commerce is beneficial or not.

20          If an enterprise engages in economic activity, then even  
21          a minimal connection to interstate commerce is sufficient to  
22          meet the interstate requirement.

23          There are some stipulations here, agreements between all  
24          parties.

25          The government and the defendant have agreed, or

1 stipulated, to certain facts with regard to this element.

2 Therefore, you must accept the following stipulated facts as  
3 true:

4 One, the parties stipulate that the enactment into law of  
5 House Bill 6 affected interstate commerce.

6 Two, the parties stipulate that the telephone  
7 communications introduced at trial for phone number  
8 740-707-2500, which was used by Larry Householder, including  
9 phone calls and text messages, utilized a facility of  
10 interstate commerce by using telephone systems through Verizon  
11 and AT&T.

12 Three, the parties stipulate that the telephone  
13 communications introduced at trial for phone number  
14 614-204-1050, which was used by Matthew Borges, including  
15 phone calls and text messages, utilized a facility of  
16 interstate commerce by using telephone systems through  
17 Verizon.

18 Four, the parties stipulate that funds transferred from  
19 FirstEnergy Service Company bank accounts to Generation Now  
20 bank accounts utilized a facility in interstate commerce by  
21 using the banking system that transmitted wires across state  
22 lines.

23 Five, the parties stipulate that funds transferred from a  
24 Generation Now bank account to the 17 Consulting Group, LLC,  
25 bank account utilized a facility in interstate commerce by

1 using the banking system that transmitted funds through wire  
2 communication across state lines.

3 As to relevant definitions and instructions as to the  
4 third element.

5 The third element that the government must prove beyond a  
6 reasonable doubt is that the defendant was either, quote,  
7 "employed by," end quote, or, quote, "associated with," end  
8 quote, the enterprise.

9 If you find that the defendant was employed by the  
10 enterprise, that is enough to satisfy this element. You  
11 should give the phrase "employed by" its common, ordinary  
12 meaning. For example, a person is employed by an enterprise  
13 when he or she is on the payroll of the enterprise, or  
14 performs services for the enterprise, or holds a position in  
15 the enterprise.

16 Alternatively, you may find that a defendant was  
17 "associated with" the enterprise, if you find that the  
18 government proved that at some time during the period  
19 indicated in the indictment he was aware of the general  
20 existence and nature of the enterprise that -- that it  
21 extended beyond his individual role, and with that awareness  
22 participated, aided, or furthered the enterprise's activities.

23 It's not required that the defendant be employed or  
24 associated with the enterprise for the entire time that the  
25 enterprise existed. Rather, to prove that a defendant was



1 either employed by or associated with an enterprise, the  
2 government must prove beyond a reasonable doubt that the  
3 defendant was connected to the enterprise in some meaningful  
4 way, and that the defendant knew of the existence of the  
5 enterprise and of the general nature of its activities at some  
6 time during the period indicated in the indictment.

7 Relevant definitions and instructions as to the fourth  
8 element.

9 The fourth element that the government must prove beyond  
10 a reasonable doubt is that the defendant conspired to conduct  
11 or participate, directly or indirectly, in the conduct of the  
12 enterprise's affairs through a, quote, "pattern of  
13 racketeering activity," end quote.

14 In other words, the government must prove beyond a  
15 reasonable doubt that the defendant knowingly became a member  
16 of the conspiracy with the intent to conduct or participate,  
17 directly or indirectly, in the conduct of the affairs of the  
18 enterprise through a "pattern of racketeering activity."

19 I will break this down for you by, first, instructing you  
20 on "conspiracy" generally, and a defendant's connection to the  
21 conspiracy. Then I will explain some of the additional terms  
22 I just referenced.

23 As to conspiracy generally. A conspiracy is a kind of  
24 criminal partnership. It's a crime for two or more persons to  
25 conspire, or agree, to commit a criminal act, even if they

1 never actually achieve their ultimate goal.

2 This does not require proof of any formal agreement,  
3 written or spoken. Nor does this require proof that everyone  
4 involved agreed on all the details. But proof that people  
5 simply met together from time to time and talked about common  
6 interests, or engaged in similar conduct, is not enough to  
7 establish a criminal agreement. These are things that you may  
8 consider in deciding whether the government has proved an  
9 agreement. But without more, they are not enough.

10 What the government must prove is that there was a mutual  
11 understanding, either spoken or unspoken, between two or more  
12 people to cooperate with each other, to conduct and  
13 participate in the conduct of the affairs of the enterprise  
14 through a pattern of racketeering. This is essential.

15 An agreement can be proved indirectly by facts and  
16 circumstances which led to a conclusion that an agreement  
17 existed. But it's up to the government to convince you that  
18 such facts and circumstances existed in this particular case.

19 Now, some of the people who may have been involved in  
20 these events are not on trial here. This does not matter.  
21 There is no requirement that all members of a conspiracy be  
22 charged and prosecuted, or tried together in one proceeding.

23 As to connection to the conspiracy. If you're convinced  
24 that there was a criminal agreement, then you must decide  
25 whether the government has proved that the defendant knowingly

1 and voluntarily joined that agreement. You must consider each  
2 defendant separately in this regard. To convict any  
3 defendant, the government must prove that he knew the  
4 conspiracy's main purpose and that he voluntarily joined it  
5 intending to help advance or achieve its goals.

6 This does not require proof that a defendant knew  
7 everything about the conspiracy, or everyone else involved, or  
8 that he was a member of it from the very beginning. Nor does  
9 it require proof that a defendant played a major role in the  
10 conspiracy, or that his connection to it was substantial. A  
11 slight role or connection may be enough.

12 But proof that a defendant simply knew about a  
13 conspiracy, or was present at times, or associated with  
14 members of the group, is not enough even if he approved of  
15 what was happening or did not object to it. Similarly, just  
16 because a defendant may have done something that happened to  
17 help a conspiracy does not necessarily make him a conspirator.  
18 These are things that you may consider in deciding whether the  
19 government has proved that a defendant joined a conspiracy.  
20 But without more they are not enough.

21 A defendant's knowledge can be proved indirectly by facts  
22 and circumstances which lead to a conclusion that he knew the  
23 conspiracy's main purpose. But it is up to the government to  
24 convince you that facts and circumstances existed in this  
25 particular case.

1           Pattern of racketeering activity.

2           I'm going to define "racketeering activity" for you  
3 momentarily. But I want first to instruct you on what  
4 constitutes a "pattern of racketeering."

5           A "pattern of racketeering activity" requires at least  
6 two acts of racketeering activity.

7           These acts must be related to the enterprise and to each  
8 other, and must pose a threat of continued criminal activity.

9           To prove that the racketeering acts are related to the  
10 enterprise, the government must prove that the acts of  
11 racketeering activity had a relationship or a meaningful  
12 connection to the enterprise. This relation or connection may  
13 be established by evidence that the racketeering activity  
14 benefitted the enterprise, was authorized by the enterprise,  
15 promoted, or furthered the purposes of the enterprise, or was  
16 in some other way related to the affairs of the enterprise.

17           To prove the racketeering acts are related to each other,  
18 the government must prove the acts had the same or similar  
19 purposes, results, participants, or methods of commission, or  
20 that they are otherwise interrelated by distinguishing  
21 characteristics and are not isolated events.

22           To prove that the racketeering acts posed a threat of  
23 continued racketeering activity, the government must establish  
24 that the acts are part of a long-term association that existed  
25 for criminal purposes. Continuing racketeering activity may

1 be proved by evidence showing a closed period of repeated  
2 activity; that is, by evidence of a series of related  
3 racketeering events committed over a substantial period of  
4 time. Acts of racketeering activity committed over only a few  
5 weeks or months and which do not threaten future criminal  
6 conduct do not satisfy this requirement. Continuing  
7 racketeering activity or a threat of continuing racketeering  
8 activity may also be proved by evidence showing past  
9 racketeering activity that by its nature projects into the  
10 future with a threat of repetition, for example, when the acts  
11 of racketeering activity are part of a long-term association  
12 that exists for criminal purposes or when the acts of  
13 racketeering activity are shown to be the regular way of  
14 conducting the affairs of the enterprise.

15 The government is not required to prove that the  
16 defendant actually committed the two acts of racketeering  
17 activity, or any acts at all. But the government must prove  
18 beyond a reasonable doubt that the defendant agreed that  
19 either he or another member of the conspiracy would commit at  
20 least two racketeering activities.

21 "Racketeering activity" includes any act of the following  
22 acts, which I will define for you momentarily.

23 Number one, public official honest services wire fraud,  
24 in violation of federal law.

25 Two, extortion under color of official right, in

1 violation of federal law.

2 Three, private honest services wire fraud, in violation  
3 of federal law.

4 Four, bribery, in violation of state law.

5 Five, interstate travel and use of interstate facilities  
6 in aid of racketeering enterprises, in violation of federal  
7 law. Also called the Travel Act.

8 Six, money laundering, in violation of federal law.

9 And seven, engaging in monetary transactions in property  
10 derived from specified unlawful activity, in violation of  
11 federal law.

12 I am going to instruct you on each of these racketeering  
13 now -- I am going to instruct you on each of these  
14 racketeering acts now. But keep in mind, the defendants are  
15 not charged with actually committing these acts. They are  
16 charged with the RICO conspiracy.

17 Therefore, the government is not required to prove that  
18 the defendant or anyone else actually committed these  
19 racketeering acts or any overt acts at all. Instead, the  
20 government only needs to prove beyond a reasonable doubt that  
21 the defendant agreed that either he or a co-conspirator would  
22 commit at least two of these racketeering acts. It's not  
23 necessary that the conspirator be on trial or charged in the  
24 indictment. Whether a conspiracy existed, or whether a person  
25 or entity is a conspirator, is for you, the jurors, to decide.

1 As to public official honest services wire fraud.

2 The elements of public official honest services wire  
3 fraud are as follows:

4 One, the defendant or -- the defendant or conspirator  
5 knowingly devised or participated in a scheme to defraud the  
6 public of its right to his honest services as a public  
7 official through bribery.

8 Two, the scheme included a material misrepresentation or  
9 concealment of a material fact. Here, the government alleges  
10 that the material misrepresentation or concealment consisted  
11 of a failure to disclose the bribery scheme.

12 Three, that the defendant or a conspirator had the intent  
13 to defraud.

14 And four, the defendant or a conspirator used wire,  
15 radio, or television communications or caused another to use  
16 wire, radio, or telephone -- television communications in  
17 interstate commerce in furtherance of the scheme.

18 Now I will give you more detailed instructions on some of  
19 the terms or phrases used in these elements.

20 A "scheme" is any plan or course of action formed with  
21 the intent to accomplish some purpose. The defendant or  
22 conspirator must have devised or participated in a plan or  
23 course of action involving bribes.

24 The term "public official" means a person with a formal  
25 employment relationship with government.

1           Public officials owe a fiduciary duty to the public.  
2           That means that the official has a duty of honesty and loyalty  
3           to act in the public interest, not for his or her own  
4           enrichment. When a public official devises or participates in  
5           a bribery scheme, that official violates the public's right to  
6           his or her honest services. This is because the official  
7           outwardly purports to be exercising independent judgment in  
8           official work, but instead has received benefits for the  
9           outcome or deed. The public is defrauded because the public  
10          is not receiving what it expects and is entitled to, namely,  
11          the public official's honest services.

12          "Bribery" is a situation where a person or entity, the  
13          payor, has agreed to provide, or has actually provided, a  
14          thing or things of value to a public official in return for  
15          the public official agreeing to undertake, or undertaking, a  
16          specific official action. This sometimes is referred to as a  
17          quid pro quo. Which is a latter phrase meaning "this for  
18          that" or "these for those." A bribery exchange can include  
19          either: one, a public official's solicitations of things of  
20          value in exchange for performing or agreeing to perform  
21          specific official action; or two, a public official's receipt  
22          of things of value when the public official knows that the  
23          person who gave the thing of value was doing so in return for  
24          the public official performing or agreeing to perform a  
25          specific official action. In other words, bribery includes



1 the public official's solicitation, receipt, acceptance, or  
2 agreement to accept a thing of value in exchange for specific  
3 official action, whether or not the payor actually provides  
4 the thing of value, and whether or not the public official  
5 ultimately performs the requested official action or intends  
6 to do so.

7 The quid pro quo agreement between the public official  
8 and the payor does not need to be stated expressly or  
9 formally. In other words, a bribery agreement is satisfied by  
10 something short of a formalized and thoroughly articulated  
11 contractual agreement. Otherwise, the law's effect could be  
12 frustrated by knowing winks and nods.

13 While a bribery need not be express, it must be explicit,  
14 by which I mean that the government must show that the  
15 contours of the proposed exchange were clearly understood by  
16 both the public official and the payor, even if the proposed  
17 exchange was not communicated between them in express terms.

18 The government may establish the public official's intent  
19 to exchange an official action for the thing of value by  
20 circumstantial evidence. This can include, for example, the  
21 public official and payor's words, conducts, acts, and all the  
22 other surrounding circumstances disclosed by the evidence, as  
23 well as any rational or logical inferences that you may draw  
24 from those surrounding circumstances.

25 Thus, bribery requires either that the public official

1 intended to exchange a thing of value from the payor for a  
2 specific official action from the public official, or that the  
3 public official knew the payor intended to exchange the thing  
4 of value for a specific official act from the public official.  
5 But there's no requirement that each payment be correlated or  
6 tied to a specific official act sufficient that the public  
7 official understood the agreement was to take a specific  
8 official action on the payor's behalf when the opportunity  
9 presented itself.

10 That said, efforts to buy favor or generalized good will  
11 do not necessarily amount to bribery. Bribery does not  
12 include gifts given in the hope that at some unknown,  
13 unspecified time a public official might act favorably in the  
14 payor's interests. Also, gifts exchanged solely to cultivate  
15 friendship are not bribes; things of value given in friendship  
16 and without expectation of anything in return are not bribes.

17 However, it is not a defense to bribery for the public  
18 official to claim that he would have lawfully performed the  
19 official action in question even without the payor having  
20 promised to provide, or having provided, the thing of value.  
21 In simple terms, taking a bribe is unlawful, even if the  
22 public official would have performed the official action  
23 anyway or even if the official action is desirable or  
24 beneficial to the public.

25 Also, it is not necessary for the government to prove

1 that the scheme actually succeeded, or that any official act  
2 was actually taken by the public official in the course of the  
3 scheme. What the government must prove is that the defendant  
4 or conspirator knowingly devised or participated in a scheme  
5 or artifice to defraud the public and the government of the  
6 right to a public official's honest services through bribes.

7 Also, because people rarely act for a single purpose, the  
8 government need not show that the public official undertook,  
9 or promised to undertake, the official action only because of  
10 the offer or acceptance of the thing of value. If you find  
11 that a public official solicited or received a thing of value  
12 in exchange for the promise of specific official action, then  
13 it makes no difference that the public official may also have  
14 had another lawful motive for soliciting or accepting the  
15 thing of value.

16 The term, quote, "official act," end quote, means any  
17 decision or action on any question, matter, cause, suit,  
18 proceeding or controversy, which may at any time be pending,  
19 or which may by law be brought before any public official in  
20 his official capacity, or in such official's place of trust or  
21 profit. This definition of official act has two parts.

22 First, the evidence must show a question, matter, cause,  
23 suit, proceeding or controversy that may at any time be  
24 pending or may by law be brought before a public official. A  
25 question, matter, cause, suit, proceeding or controversy must

1 involve a formal exercise of governmental power, and it must  
2 be something specific and focused.

3 Second, the government must prove that the public  
4 official made a decision or took an action on that question or  
5 matter, or agreed to do so. The decision or action may  
6 include using an official position to exert pressure on  
7 another official to perform an official act or to advise  
8 another public official with the intent to pressure the  
9 official to perform an official act. Actual authority over  
10 the end result is not controlling.

11 Under this definition, some acts do not count as, quote,  
12 "official acts," quote. Setting up a meeting, calling another  
13 public official, or hosting an event would not, standing  
14 alone, qualify as an official act. The public official need  
15 not have a direct role in the official act; an indirect role  
16 is sufficient.

17 As I mentioned, the public official need not have  
18 actually performed an official act, or even intended to do so.  
19 Rather, it is sufficient if the public official agreed to  
20 perform a specific official act in exchange for a thing of  
21 value, or if he received payment knowing it was provided to  
22 him in exchange for his agreement to perform a specific  
23 official act. Moreover, the public official need not have  
24 specified the means that he would use to perform his end of  
25 the bargain. He may, for example, conclude that an agreement

1 was reached that the evidence shows that the public official  
2 received a thing of value knowing that it was given with the  
3 expectation that the official would perform a specific  
4 official act in return.

5 An act is, quote, "knowingly," quote, done if done  
6 voluntarily and not because of mistake or some other innocent  
7 reason.

8 A "thing of value" includes things possessing intrinsic  
9 value, whether tangible or intangible, that the person giving  
10 or offering or the person soliciting or receiving considers to  
11 be worth something. A "thing of value" could include a  
12 contribution to a 501(c)(4) organization, so long as it was  
13 solicited or received in exchange for a specific official act.

14 To act with, quote, "intent to defraud," quote, means to  
15 act with an intent to deceive or deprive the public and  
16 government of their right to a public official's honest  
17 services.

18 A misrepresentation or concealment is, quote, "material,"  
19 quote, if it has a natural tendency to influence or is capable  
20 of influencing the decision of the public or government agency  
21 that employed the public official.

22 The fraud or misrepresentation may consist of the  
23 concealment or failure to disclose the thing or things of  
24 value that the public official has solicited, received, or  
25 agreed to receive, or the public official's implicit false

1       pretense to his governmental employer or the public that he  
2       remains loyal to the employer's or the public's interest.

3               "Wire communication" includes communications that occur  
4       by telephone or by banking transactions.

5               To "cause" wire, radio, or television communications to  
6       be used is to do an act with knowledge that the use of the  
7       communications will follow in the ordinary course of business  
8       or where such use can reasonably be foreseen.

9               The term "interstate commerce" includes wire, radio, or  
10       television communications which crossed a state line.

11              It is not necessary that the government prove all of the  
12       details alleged concerning the precise nature and purpose of  
13       the scheme, or that the material transported -- transmitted by  
14       wire, radio, or television communications was itself false or  
15       fraudulent, or that the alleged scheme actually succeeded in  
16       defrauding anyone, or that the use of the wire, radio, or  
17       telephone communications was intended as the specific or  
18       exclusive means of accomplishing the alleged fraud or that  
19       someone relied on the misrepresentation or false statement, or  
20       that the defendant or conspirator obtained money or property  
21       for his own benefit.

22              As to extortion under color of official right.

23              The elements of extortion under color of official right  
24       are as follows:

25              One, that the defendant or conspirator was a public

1 official.

2 Two, that the defendant or conspirator obtained,  
3 accepted, took, or received property, that he was not lawfully  
4 entitled to, from another person with that person's consent.

5 That the defendant or conspirator knew the property was  
6 being obtained, accepted, taken, or received in exchange for  
7 an official act.

8 And four, that as a result, interstate commerce was  
9 affected in any way or degree.

10 Now I'll give you more detailed instructions on some of  
11 the terms or phrases used in these elements.

12 The term, quote, "public official," quote, means a person  
13 with a formal employment relationship with government.

14 The term "property" means money or other tangible or  
15 intangible things of value that can be transferred, including  
16 contributions to a 501(c)(4) organization.

17 The phrase, quote, "the defendant or conspirator knew the  
18 property was being obtained, accepted, taken, or received in  
19 exchange for an official act," end quote, may include the  
20 conduct of taking a bribe, where the word "bribe" is defined  
21 in the same manner as it was in connection with the  
22 instructions I gave you previously for Public Official Honest  
23 Services Wire Fraud.

24 Consistent with these earlier instructions, I remind you  
25 that:

1           Efforts to buy favor or generalized goodwill do not  
2 necessarily amount to bribery; bribery does not include gifts  
3 given in the hope that at some unknown, unspecified time a  
4 public official might act favorably in the payor's interests.

5           Gifts exchanged solely to cultivate friendship are not  
6 bribes; things of value given in friendship and without  
7 expectation of anything in return are not bribes.

8           It is not a defense to bribery that the public official  
9 would have done the official act anyway, even without the  
10 receipt of the property.

11           The term "official act" is defined in the same manner as  
12 it was in connection with the instructions I just gave you for  
13 public official honest services wire fraud.

14           "Interstate commerce was affected" if the conduct, in any  
15 way, interferes with or changes the movement of goods,  
16 merchandise, money, or other property in commerce between  
17 different states. Any effect at all on commerce is enough.

18           This includes obtaining money that belonged to a business  
19 which customarily purchased goods from outside the state of  
20 Ohio, or that engaged in business outside the state of Ohio,  
21 if the defendant or conspirator's conduct made that money  
22 unavailable to the business entity for the purchase of such  
23 goods or the conducting of such business. It is not  
24 necessarily for you to find that there was an actual effect on  
25 interstate commerce.



1           Finally, the government need not prove:

2           That the bribery agreement was stated in express terms,  
3           for otherwise the law's effect could be frustrated by knowing  
4           winks and nods. A bribery agreement is satisfied by something  
5           short of a formalized and thoroughly articulated contractual  
6           arrangement. While a bribery agreement need not be express,  
7           it must be explicit, by which I mean that the government must  
8           show that the contours of the proposed exchange were clearly  
9           understood by both the public official and the payor even if  
10          the proposed exchange was not communicated between them in  
11          express terms.

12          That the public official ultimately performed the  
13          official act.

14          That the property was exchanged for an official act only.  
15          Because people rarely act for a single purpose, if you find  
16          that the property was exchanged at least in part for an  
17          official act, then it makes no difference that the defendant  
18          may have also had another separate lawful purpose for  
19          exchanging the property.

20          That the defendant or conspirator had the actual power to  
21          effectuate the end for which he accepted or induced payment;  
22          it's sufficient that the defendant or conspirator exploited a  
23          reasonable belief that he had the power to do so.

24          As to private honest services wire fraud, the elements of  
25          private honest services wire fraud are as follows:

1           That the defendant or conspirator knowingly devised or  
2 participated in a scheme to defraud an employer of its right  
3 to the honest services of its employees through bribery.

4           That the defendant or conspirator had the intent to  
5 defraud.

6           That the defendant or conspirator foresaw or reasonably  
7 should have foreseen that the employer might suffer economic  
8 harm as a result of the scheme.

9           And four, that the defendant or conspirator used wire,  
10 radio, or television communications in interstate commerce in  
11 furtherance of the scheme.

12           Now I will give you some more detailed instructions on  
13 some of the terms or phrases just used in these elements.

14           A "scheme" is any plan or course of action formed with  
15 the intent to accomplish some purpose. The defendant or  
16 conspirator must have devised or participated in a plan or  
17 course of action involving the intended breach of a fiduciary  
18 duty through bribery.

19           An employer who works for a private employer has a duty  
20 to provide honest services to the employer. A fiduciary duty  
21 exists where the employee has a duty to act for the benefit of  
22 the employer and the employer relies on the employee to carry  
23 out his job duties for the benefit of the organization. When  
24 a defendant devises or participates in a bribery scheme  
25 involving an employee's breach of his fiduciary duty to his

1     employer, such a scheme is intended to deprive the employer of  
2     its right to honest services. The employer is defrauded  
3     because it is not receiving what it expects and is entitled  
4     to, namely, the employee's honest services.

5             A defendant need not owe the fiduciary duty personally,  
6     so long as he devises or participates in a bribery scheme  
7     intended to deprive an employer of its right to the honest  
8     service of its employees. In other words, an employee -- the  
9     holder of the fiduciary duty -- may be the attempted target of  
10    the bribe and may be entirely innocent. It's not necessary  
11    for the employee to accept the thing of value from the payor  
12    or to take action violating his fiduciary duty.

13            The actual or intended breach of the fiduciary duty must  
14    be participation in a bribery scheme involving the actual,  
15    intended, or solicited exchange of a thing of value in  
16    exchange for the employee improperly providing information  
17    that the employer intended to keep secret -- in other words, a  
18    quid pro quo, a Latin phrase meaning "this for that" or "these  
19    for those." The quid pro quo agreement between the employee  
20    and the payor do not need to be stated expressly or formally.  
21    Rather, the intent to exchange may be established by  
22    circumstantial evidence, based upon the payor's words,  
23    conduct, acts, and all of the surrounding circumstances  
24    disclosed by the evidence and the rational or logical  
25    inferences that may be drawn from them.

1           Bribery requires the intent to cause an exchange of  
2 something of value, but each payment does not need to be  
3 correlated with or tied to specific action, so long as the  
4 employee understood that the agreement was to take action on  
5 the payor's behalf when the opportunity presented itself.

6           Also, it is not necessary for the government to prove  
7 that the scheme actually succeeded, or that anything of value  
8 was actually exchanged. The government must prove that the  
9 defendant or conspirator knowingly devised or participated in  
10 a scheme to defraud a private entity of its right to the  
11 honest services of an employee through bribes.

12           When the defendant or conspirator is the bribe payor, it  
13 is sufficient if the defendant or conspirator intends or  
14 solicits the employee to violate his duty of honest services  
15 to the employer in exchange for a thing of value and that the  
16 defendant foresaw, or should have foreseen, that the employer  
17 might suffer economic harm as a result of the intended or  
18 solicited breach of fiduciary duty.

19           A "thing of value" includes things possessing intrinsic  
20 value, whether tangible or intangible, that the person giving  
21 or offering the person soliciting or receiving considers to be  
22 worth something.

23           To act with "intent to defraud" means to act with an  
24 intent to deceive or deprive a private employer of its right  
25 to the honest services of its employees.

1           "Wire communication" includes communications that occur  
2 by telephone or by banking transactions.

3           To "cause" wire, radio, or television communications to  
4 be used is to do an act with knowledge that the use of the  
5 communications will follow in the ordinary course of business  
6 or where such use can reasonably be foreseen.

7           The term "interstate commerce" includes wire, radio, or  
8 television communications which crossed a state line.

9           It's not necessary that the government prove all of the  
10 details alleged concerning the precise nature and purpose of  
11 the scheme or that the material transmitted by wire, radio, or  
12 television communications was itself false or fraudulent or  
13 that the alleged scheme actually succeeded in defrauding  
14 anyone or that the use of the wire, radio, or television  
15 communications was intended as the specific or exclusive means  
16 of accomplishing the alleged fraud or that someone relied on  
17 the misrepresentation or false statement or that the defendant  
18 obtained money or property for his own benefit.

19           Bribery, in violation of state law. The elements of Ohio  
20 state law bribery are as follows:

21           A public servant, who is either the defendant or a  
22 conspirator, knowingly solicited or accepted for himself any  
23 valuable thing or valuable benefit.

24           That the public servant, who is either the defendant or a  
25 conspirator, intended the valuable thing or benefit to corrupt

1 or to improperly influence him.

2 And that the corruption or influence was with respect to  
3 the discharge of his duties as a public servant.

4 Now I will give you more detailed instructions on some of  
5 the terms or phrases used in these elements.

6 A person acts "knowingly," regardless of his purpose,  
7 when he is aware that his conduct will probably cause a  
8 certain result. A person has knowledge of circumstances when  
9 he is aware that such circumstances probably exist. When  
10 knowledge of the existence of a particular fact is an element  
11 of an offense, such knowledge is established if a person  
12 subjectively believes that there is a high probability of its  
13 existence and fails to make inquiry or acts with a conscious  
14 purpose to avoid learning the fact.

15 "To solicit" means to entice, urge, lure, or ask.

16 "Valuable thing or valuable benefit" includes, but is not  
17 limited to, contribution to a 501(c)(4) organization.

18 "To corrupt" means to destroy or undermine the honesty or  
19 integrity of another; to taint, to infect.

20 A "public servant "includes any elected or appointed  
21 officer, employee, or agent of the state or any political  
22 subdivision, whether in a temporary or permanent capacity.

23 As to the Travel Act, the elements of the Travel Act are  
24 as follows:

25 The defendant or conspirator knowingly used or caused to

1 be used a facility in interstate commerce.

2 Two, the defendant or conspirator did so with the intent  
3 to promote, manage, establish, or carry on lawful activity.

4 Three, after the use of a facility in interstate  
5 commerce, the defendant or conspirator did an act, or  
6 attempted to do an act, in order to promote, manage,  
7 establish, or carry on the unlawful activity.

8 Now I'll give you more detailed instructions on some of  
9 the terms or phrases used in these elements.

10 The term "uses any facility in interstate commerce" means  
11 employing or utilizing any method of communication between one  
12 state and another. This may include, for instance, the use of  
13 the telephone systems, the banking systems, and the postal  
14 service.

15 The government must prove that the defendant intended the  
16 use of interstate facilities to facilitate or further the  
17 unlawful activity. The government does not, however, need to  
18 prove that the use of an interstate facility was essential to  
19 that activity. But the government must prove beyond a  
20 reasonable doubt that the defendant used a facility in  
21 interstate commerce and that one of the reasons for this use  
22 was to promote, manage, establish, or carry on the unlawful  
23 activity.

24 "Unlawful activity" means bribery in violation of state  
25 law if the defendant or conspirator, during the course of any

1 campaign in advocacy of or in opposition to the adoption of  
2 any proposition or issue to the voters, knowingly and with  
3 intent to affect the outcome of a campaign promised, offered,  
4 or gave any valuable thing or valuable benefit to any person  
5 who was employed by or was an agent of a committee in advocacy  
6 of or in opposition to the adoption of any ballot proposition  
7 or issue, for the purpose of influencing the employee or agent  
8 with respect to the improper discharge of the employee's or  
9 agent's campaign duties, or to obtain information about the  
10 committee's campaign organization.

11 As to money laundering, the elements of money laundering  
12 are as follows:

13 The defendant or co-conspirator -- conspirator conducted  
14 or attempted to conduct a financial transaction.

15 That the financial transaction involved property that  
16 represented the proceeds of specified unlawful activity.

17 That the defendant or conspirator knew that the property  
18 involved in the financial transaction represented the proceeds  
19 of some form of unlawful activity.

20 And that the defendant or conspirator knew that the  
21 transaction was designed in whole or in part to conceal or  
22 disguise the nature, location, source, ownership, or control  
23 of the proceeds of the specified unlawful activity.

24 Now I will give you more detailed instructions on some of  
25 the terms or phrases used in these elements:



1           "Financial transaction" includes a transaction that  
2 affects interstate or foreign commerce involving the movement  
3 of funds by wire or other means.

4           "Conducts" includes initiating, concluding, or  
5 participating in initiating or concluding a transaction.

6           "Proceeds" means any property derived from, obtained, or  
7 retained, directly or indirectly, through some form of  
8 unlawful activity, including the gross receipts of such  
9 activity.

10           "Specified unlawful activity" means some racketeering  
11 activity, as those offenses were defined above, that is:  
12 public official honest services wire fraud, extortion under  
13 color of right, and bribery under state law. These offenses  
14 are all felonies.

15           The government need only establish that the defendant or  
16 conspirator knew that the purpose of the transaction was to  
17 conceal or disguise the proceeds, not that the defendant or  
18 conspirator had that intent.

19           The phrase, quote, "knew that the property involved in a  
20 financial transaction represents the proceeds of some form of  
21 unlawful activity," end quote, means that the defendant or  
22 conspirator knew the funds involved in the transaction  
23 represented the proceeds of some form, though not necessarily  
24 which form, of activity that constitutes a felony under state  
25 or federal law.

1           The government does not have to prove that the defendant  
2           or conspirator knew the property involved represented proceeds  
3           of a felony as long as he knew the property involved  
4           represented proceeds of some form of unlawful activity.

5           Engaging in monetary transactions in property derived  
6           from specified unlawful activity.

7           The element of engaging -- the elements of engaging in  
8           monetary transactions in property derived from specified  
9           unlawful activity are:

10           One, that the defendant or conspirator knowingly engaged  
11           in a monetary transaction.

12           Two, that the monetary transaction was in property  
13           derived from specified unlawful activity.

14           Three, that the property had a value greater than  
15           \$10,000.

16           Four, that the defendant or conspirator knew that the  
17           transaction was in criminally derived property.

18           And five, that the monetary transaction took place within  
19           the United States.

20           Now I will give you more detailed instructions on some of  
21           the terms or phrases used in these elements.

22           "Monetary transaction" means the deposit, withdrawal,  
23           transfer, or exchange in or affecting commerce of funds or a  
24           monetary instrument by, through, or to a financial  
25           institution.

1           The term "specified unlawful activity" has the same  
2 meaning I provided to you as to money laundering.

3           "Criminally derived property" means any property  
4 constituting or derived from proceeds obtained from a criminal  
5 offense. While the money must be from a specified unlawful  
6 activity, the defendant or conspirator need only know that the  
7 money was criminally derived. In other words, the Court need  
8 not prove that the defendant or conspirator knew the property  
9 was derived from a particular type of unlawful activity, so  
10 long as the government proves the defendant or conspirator  
11 knew it was criminally derived. In order for property to  
12 qualify as criminally derived, the underlying criminal  
13 activity must have been completed and the defendant or  
14 conspirator must have obtained or controlled the tainted  
15 funds. The funds need not be in the defendant or  
16 conspirator's physical possession or in a personal bank  
17 account, as long as defendant exercised control over the  
18 funds.

19           I am going to read the last sentence again. The funds  
20 need not be in the defendant or conspirator's physical  
21 possession or in a personal bank account, so long as he  
22 exercised control over the funds.

23           Unanimity as to element four.

24           To convict a defendant of the RICO conspiracy, your  
25 verdict must be unanimous as to which type or types of

1 predicate racketeering activity a defendant agreed would be  
2 committed.

3 For example, at least two acts of either public official  
4 honest services wire fraud, extortion under color of right,  
5 private honest services wire fraud, bribery under state law,  
6 Travel Act violations, money laundering, or monetary  
7 transactions and property derived from specified unlawful  
8 activity. But it need not be two of the same type of act --  
9 it could be two acts of one type of racketeering activity or  
10 two different types of racketeering activity. Either way, you  
11 must all unanimously agree on the two types of acts.

12 Venue. Now, some of the events that you've heard about  
13 happened in other places. There is no requirement that the  
14 entire conspiracy take place here in the Southern District of  
15 Ohio. It's sufficient for the government to convince you that  
16 some act in furtherance of a conspiracy took place here in the  
17 Southern District of Ohio.

18 Here, however, the government and the defendant have  
19 agreed, or stipulated, that venue is proper in the Southern  
20 District of Ohio. Therefore, you must accept this stipulated  
21 fact as true.

22 Additional instructions.

23 Typical campaign contributions are not unlawful. Neither  
24 is creating or using a 501(c)(4) entity for lawful purposes.  
25 RICO conspiracy, however, is unlawful. Therefore, if you find

1 that the government has proved its case as to RICO conspiracy  
2 against a particular defendant, you must return a guilty  
3 verdict as to that particular defendant. Otherwise, you must  
4 return a not guilty verdict as to that particular defendant.

5 I want to caution you more generally that this case is  
6 not about energy policy in Ohio. Your role as jurors in this  
7 case is to decide whether the government has met its burden to  
8 prove either or both defendants guilty of conspiracy beyond a  
9 reasonable doubt. Whether you believe House Bill 6 was good  
10 or bad legislation is not at issue. You should not allow what  
11 you think of the law, House Bill 6, to influence your decision  
12 or your impartial evaluation of the evidence.

13 Similarly, if you conclude that the government has proven  
14 its case beyond a reasonable doubt, whether the defendants  
15 would have supported House Bill 6 regardless is not a defense.

16 So that concludes the part of my instructions explaining  
17 the elements of the crime. Next I will state the defense  
18 position.

19 The defendants deny the charge and deny that they were  
20 associated with or employed by any alleged enterprise.

21 This concludes the part of my instructions explaining the  
22 elements of the crime and defendants' position. Now I am  
23 going to explain some rules that you must use in considering  
24 some of the testimony and evidence.

25 Defendants' right not to testify or present evidence. A

1 defendant has an absolute right not to testify or present  
2 evidence. The fact that the defendant, Matthew Borges, chose  
3 not to testify cannot be considered by you in any way. Do not  
4 even discuss it in your deliberations.

5 Remember that it is up to the government to prove each of  
6 the defendants guilty beyond a reasonable doubt. It is not up  
7 to the defendants to prove that they are innocent.

8 As to a defendant's testimony, here you have heard the  
9 defendant Larry Householder testify. Earlier, I talked to you  
10 about the "credibility" or the "believability" of the  
11 witnesses. And I suggested some things for you to consider in  
12 evaluating each witness's testimony.

13 You should consider those same things in evaluating  
14 defendant Larry Householder's testimony.

15 Now, as to testimony of cooperating codefendants.

16 You heard the testimony of Juan Cespedes and Jeffrey  
17 Longstreth. You also heard that these witnesses were involved  
18 in the same offense that the defendants are charged with  
19 committing, and that these two witnesses pleaded guilty to the  
20 offense.

21 The fact that these witnesses pleaded guilty to the crime  
22 is not evidence that the defendants are guilty, and you cannot  
23 consider this against the defendants in any way.

24 Additionally, you heard that the government promised  
25 these witnesses a request for a reduced sentence in exchange

1 for their cooperation.

2 It is permissible for the government to make such a  
3 promise.

4 But you should consider their testimony with more caution  
5 than the testimony of other witnesses. Consider whether the  
6 testimony may have been influenced by the government's  
7 promise.

8 Do not convict the defendants based on the unsupported  
9 testimony of such witnesses, standing alone, unless you  
10 believe their testimony beyond a reasonable doubt.

11 As to the testimony of a paid informant, you have heard  
12 the testimony of Tyler Fehrman. You have also heard that he  
13 received money from the FBI after he provided information.

14 The use of paid informants is common and permissible.  
15 But you should consider the witness's testimony with more  
16 caution than the testimony of other witnesses. Consider  
17 whether his testimony may have been influenced by what the  
18 government gave him.

19 Do not convict the defendants based on the unsupported  
20 testimony of such a witness, standing alone, unless you  
21 believe his testimony beyond a reasonable doubt.

22 Impeachment by prior inconsistent statement not under  
23 oath.

24 You have heard the testimony of Robert Klaffky. You have  
25 also heard that before this trial he made a statement that may

1 be different from his testimony here in court.

2 The earlier statement was brought to your attention only  
3 to help you decide how believable his testimony was. You  
4 can't use it as proof of anything else. You can only use it  
5 as one way of evaluating his testimony here in court.

6 Opinion testimony. You have heard the testimony of Noah  
7 Dormady, Charles Walker, and Josh Altic, who testified as  
8 opinion witnesses.

9 You do not have to accept their opinions. In deciding  
10 how much weight to give their testimony, you should consider  
11 the witness's qualifications and how he reached his  
12 conclusions. Also consider the other factors discussed in  
13 these instructions for weighing the credibility of witnesses.

14 Remember that you alone decide how much of a witness's  
15 testimony, if any, to believe, and how much weight it  
16 deserves.

17 There were witnesses testifying to both facts and  
18 opinions.

19 You heard the testimony of Special Agent Blane Wetzel and  
20 Nathan Holbrook and Chris Hartsel of the FBI, who testified to  
21 both facts and opinions. Each of these types of testimony  
22 should be given the proper weight.

23 As to the testimony and facts, consider the factors  
24 discussed earlier in these instructions for weighing the  
25 credibility of witnesses.



1           As to the testimony on opinions, you do not have to  
2           accept the witness's opinions. In deciding how much weight to  
3           give it, you should consider the witness's qualifications and  
4           how he reached his conclusions along with the other factors  
5           discussed in these instructions for weighing the credibility  
6           of witnesses.

7           Remember that you alone decide how much of a witness's  
8           testimony, if any, to believe, and how much weight it  
9           deserves.

10          As to testimony regarding the law, you have heard some  
11          witnesses testify regarding the law or what they believe to be  
12          lawful or unlawful conduct.

13          The instructions that I'm giving you constitute the  
14          controlling law, and this is the law you must follow.

15          As to investigative techniques, you've heard evidence  
16          obtained from the government's use of undercover agents,  
17          informants, and deceptive investigative techniques. The  
18          government is permitted to use these techniques. You should  
19          consider evidence obtained this way together with and in the  
20          same way you consider the other evidence -- all other  
21          evidence.

22          And keep in mind that you should judge the credibility of  
23          the witnesses as I have previously instructed.

24          Materials not admitted into evidence.

25          During the trial, you saw counsel use certain summaries,

1 charts, or other similar materials that were offered to assist  
2 in the presentation and understanding of the evidence. This  
3 material is not itself evidence and must not be considered as  
4 proof of any facts.

5 Evidence summaries admitted into evidence.

6 During the trial, you have seen or heard summary evidence  
7 in the form of charts, calculations, and similar materials.  
8 These summaries are admitted into evidence, in addition to the  
9 materials they summarize, because the summaries may assist you  
10 in understanding the evidence that has been presented.

11 But the summary itself is not evidence of the material it  
12 summarizes and is only as valid and reliable as the underlying  
13 material it summarizes.

14 Transcriptions of recordings. You have heard some  
15 recorded conversations that were received in evidence, and you  
16 were given some written transcripts of the proceedings.

17 Keep in mind that the transcripts are not evidence. They  
18 were given to you only to help as a guide and enable you to  
19 follow what was being said. The recordings themselves are the  
20 evidence. If you noticed any differences between what you  
21 heard on the recordings and what you read in the transcripts,  
22 you must rely on what you heard, not what you read. If you  
23 could not hear or understand certain parts of the recordings,  
24 you must ignore the transcripts as far as those parts are  
25 concerned.

1           Redactions. The Court's rules require that certain  
2 information be redacted, or blacked out, from the exhibits.  
3 You should not draw any inference from the fact that an  
4 exhibit has been redacted.

5           And now as to deliberation and verdict.

6           I have concluded the part of my instructions regarding  
7 the rules of considering some of the testimony and evidence.  
8 And I want to finish up by explaining some things about your  
9 deliberations in the jury room and your possible verdicts.

10          Tomorrow, after closing arguments, the first thing that  
11 you should do when you retire to the jury room is you chose  
12 someone to be your foreperson. This person will help guide  
13 your discussions and will speak for you collectively here in  
14 court. The foreperson's vote and opinion does not carry any  
15 greater weight than any other juror.

16          Once you start deliberating, do not talk to anyone -- not  
17 Ms. Webster, not my staff, not me, not anyone except each  
18 other -- about the case.

19          If you have any questions or messages, you must write  
20 them down on a piece of paper, sign them, and then give them  
21 to Ms. Santora, who will then bring your written question to  
22 me. You buzz for her in the jury room. Any questions or  
23 messages normally should be sent to me through your foreperson  
24 in writing. Once I receive your written question or message,  
25 I will respond as soon as I can. I will likely have to talk

1 to the lawyers about what you have asked, so it may take me  
2 some time to get back to you. In the meantime, please  
3 continue your deliberations while you wait to hear back from  
4 me if you are able to do so.

5 One more thing about messages. Do not ever write down or  
6 tell anyone, including me, how you stand on your votes. For  
7 example, do not write down or tell anyone that you're split  
8 6-6 or 8-4, or whatever your vote happens to be. That should  
9 stay secret until you are finished.

10 As to experiments, research, investigation, and outside  
11 communications. This may sound familiar. Remember that you  
12 must make your decision based only on the evidence that you  
13 saw and heard here in court.

14 During your deliberations, both in the jury room and on  
15 break, you must not communicate with or provide information to  
16 anyone by any means about this case. You may not use any  
17 electronic device or media, such as a telephone, cell phone,  
18 smart phone, iPhone, tablet, smart watch, or computer, the  
19 Internet, any Internet service, any text or instant messaging  
20 service, any app, any interstate chat room, blog, or website.  
21 All of this includes but is not limited to Twitter, Snapchat,  
22 Instagram, Facebook, LinkedIn, or YouTube to communicate to  
23 anyone any information about this case or to conduct any  
24 research about this case until I accept your verdict. In  
25 other words, you can't talk to anyone on the phone, correspond

1 with anyone, or electronically communicate with anybody about  
2 this case, and you may not do any form of outside research.  
3 You can only discuss the case in the jury room with your  
4 fellow jurors during deliberations, pursuant to my  
5 instruction. I expect you will inform me immediately if you  
6 become aware of another juror's violation of these  
7 instructions.

8 If a juror needs to leave the room, perhaps for the  
9 bathroom or something like that, you stop your deliberations,  
10 wait until that person's back, and then all of you continue  
11 your deliberations.

12 The reason that you are not permitted to conduct outside  
13 research or communicate with anyone other than each other  
14 about the case is because it is critical that you decide this  
15 case, imperative that you decide this case based solely on the  
16 evidence presented in this courtroom. Information available  
17 in reference materials, the news, on the Internet, or through  
18 social media might be wrong, incomplete, inaccurate, or  
19 misleading. You are only permitted to discuss this case with  
20 your fellow jurors during deliberations because they have seen  
21 and heard the same evidence you have. In our judicial system,  
22 it's important that you are not influenced by anything or  
23 anyone outside of this courtroom. Otherwise, your decision  
24 might be based on information known only to you and not your  
25 fellow jurors or the parties in this case. This would

1       unfairly and adversely impact the judicial process. A juror  
2       who violates these restrictions jeopardizes the fairness of  
3       these proceedings, and a mistrial could result, which would  
4       require the entire trial process to start over.

5               Unanimous verdict. Your verdict as to each defendant,  
6       whether it's guilty or not guilty, must be unanimous.

7               To find a defendant guilty, every one of you must agree  
8       that the government has overcome the presumption of evidence  
9       with evidence that proves the defendant's guilt beyond a  
10      reasonable doubt.

11              To find a defendant not guilty, every one of you must  
12      agree that the government has failed to convince you beyond a  
13      reasonable doubt.

14              Either way, guilty or not guilty, your verdict must be  
15      unanimous.

16              As to the duty to deliberate. Now that all the evidence  
17      is in and once the closing arguments are completed, you are  
18      free to talk about the case among yourselves only and only  
19      while in the jury room. In fact, it's your duty to talk with  
20      each other about the evidence and make every reasonable effort  
21      you can to reach a unanimous agreement. Talk with each other,  
22      listen carefully and respectfully to each other's views, and  
23      keep an open mind as you listen to what your fellow jurors  
24      have to say. Try your best to work out your differences. Do  
25      not hesitate to change your mind if you're convinced that

1 other jurors are right and that your original position was  
2 wrong.

3 But do not ever change your mind just because other  
4 jurors see things differently or just to get the case over  
5 with. In the end, your vote must be exactly that -- your own  
6 vote. It's important for you to reach a unanimous agreement,  
7 but only if you can do so honestly and in good conscience.

8 No one will be allowed to hear your discussions in the  
9 jury room, and no record will be made of what you say. You  
10 should all feel free to speak your minds. And the foreperson  
11 should make sure everyone is afforded that opportunity, even  
12 if you have to call on them.

13 Listen carefully to what the other jurors have to say,  
14 and then decide for yourself if the government has proved  
15 either, both, or neither of the defendants guilty beyond a  
16 reasonable doubt.

17 As to punishment. If you decide that the government has  
18 proved the defendant guilty, then it will be my job to  
19 determine what the appropriate punishment should be.

20 Deciding what the punishment should be is my job, not  
21 yours. It would violate your oaths as jurors to even consider  
22 the possible punishment in deciding your verdict.

23 Your job is to look at the evidence and decide if the  
24 government has proved either, both, or neither defendant  
25 guilty beyond a reasonable doubt.

1 I have prepared verdict forms that you should use to  
2 record your verdict. Can we put the verdict form up on the  
3 screen? I am not giving you paper copies of it because  
4 there's only one that's going to go up there. It's  
5 straightforward.

6 The verdict form, U.S.A. versus Larry Householder.  
7 Verdict form.

8 "On the charge of Racketeering Influenced and Corrupt  
9 Organizations Act conspiracy, in violation of federal law.

10 "We, the jury, find the defendant Larry Householder," you  
11 mark either "guilty" or not "guilty," you date it, and all  
12 persons including the foreperson sign it.

13 There's a second identical verdict form except it's as to  
14 Matthew Borges. You will be required to indicate whether we,  
15 the jury, find the Defendant Matthew Borges not guilty or  
16 guilty. It needs to be dated. It needs to be signed by all  
17 of you.

18 The verdict form. If you unanimously decide that the  
19 government has proved the charge against a particular  
20 defendant beyond a reasonable doubt, say so by having your  
21 foreperson mark "guilty" on the form as to that particular  
22 defendant. If you decide unanimously that the government has  
23 not proved the charge against a particular defendant beyond a  
24 reasonable doubt, say so by having your foreperson mark "not  
25 guilty" on the form as to that particular defendant.



1           Each of you must sign and the form must be dated after it  
2           is completed. The foreperson is responsible for keeping the  
3           verdict forms secure, and to provide -- ultimately provide  
4           them to me in the courtroom as instructed after you've reached  
5           your verdict.

6           Remember that the verdict is limited to the charge  
7           against these defendants. Each defendant is only on trial for  
8           the particular crime charged in the indictment. Your job is  
9           limited to deciding whether the government has proved the  
10          crime charged as to each defendant.

11          As to juror notes, remember that if you elected to take  
12          notes during the trial, your notes should be used only as  
13          memory aids. You should not give your notes greater weight  
14          than your independent recollection of the evidence. You  
15          should rely upon your own independent recollection of the  
16          evidence or lack of evidence and you should not be unduly  
17          influenced by the notes of other jurors. Notes are not  
18          entitled to any more weight than the memory or impression of  
19          each juror.

20          Whether you took notes or not, each of you must form and  
21          express your own opinion as to the facts of the case.

22          The Court has no opinion. Let me finish up by repeating  
23          something that I said to you earlier. Nothing I have said or  
24          done during this trial was meant to influence your decision in  
25          any way. You decide for yourselves if the government has

1 proved the defendant guilty beyond a reasonable doubt.

2 I lift my eyes and it would appear that you all survived.  
3 When it comes time to deliberate, keep your eye on the ball  
4 and the question that is presented to you.

5 You can leave your instructions with you, not taking  
6 them -- on the chair, not taking them home with you. When you  
7 go home, no discussion of the case with anyone. Don't start  
8 talking about it among yourselves yet. No independent  
9 research. No checking out the media or social media. And be  
10 prepared when you come to court tomorrow by 9 o'clock in this  
11 room, probably 8:45 or 8:30 at the spot, be prepared to come  
12 in and hear closing arguments. It's not evidence, but it's  
13 designed to assist you. And once we're through with it, I  
14 will then send you to your room, and you will begin your  
15 deliberations.

16 So you are going to leave your notes. You are going to  
17 leave your jury instructions, put your jury number on your  
18 jury notes if it's not already there so we can get them back  
19 to the appropriate person.

20 And momentarily, I'm going to send you home. And at some  
21 point in time, I'm going to give you a long speech about how  
22 grateful we are for you having taken the time and invested the  
23 energy as serving on a jury. Service on a jury I believe is a  
24 sacrifice required by democracy, and we are so fortunate and  
25 grateful that you have taken the work on and paid such close

1 attention.

2 Is there anything I need to address from any party before  
3 I excuse the jury for the day? From the government?

4 MS. GLATFELTER: No, Your Honor.

5 THE COURT: From Mr. Householder's counsel?

6 MR. BRADLEY: No, Your Honor.

7 THE COURT: From Mr. Borges's counsel?

8 MR. SCHNEIDER: No, Your Honor. No.

9 THE COURT: We're starting at 9 a.m. tomorrow. So  
10 get to your spot in time. Take a break. God bless you. Out  
11 of respect for you, we will rise as you leave for the day.

12 THE COURTROOM DEPUTY: All rise for the jury.

13 (Jury exited the courtroom at 3:54 p.m.)

14 THE COURT: The jury's left the room. As always,  
15 we'll wait until we're advised that they have cleared the  
16 floor before we depart the courtroom.

17 I'm going to state what I hope is the general time frame  
18 for closing. If you want to write it down, feel free. 9 a.m.  
19 to 11 a.m., the government; 11 a.m. to 12:10 p.m., lunch;  
20 12:15 to 2:45, Householder; 2:45 to 3, break; 3:05 to 4:30,  
21 Borges; 4:35 to 4:50, break; 4:55 to 5:30, government  
22 rebuttal.

23 If you use less time, we'll get the jury out of here  
24 sooner. I will interrupt you if you start to go well beyond  
25 the commitments you have made to me on length.

1           Now that the jury's out of here, is there anything anyone  
2 needs to bring to my attention before I break? From the  
3 government?

4           MS. GLATFELTER: Yes, very briefly. We understand  
5 that the defense has ordered trial transcripts of various  
6 portions throughout the trial, and we are asking that trial  
7 transcripts of testimony of witnesses not be displayed in  
8 PowerPoints during closing. The Sixth Circuit has addressed  
9 transcript issues in terms of what -- in terms of trial  
10 transcripts going back to the jury and has noted that in that  
11 context there are inherent dangers in providing trial  
12 transcripts to jurors, including placing undue weight on the  
13 testimony of a particular portion of a particular witness's  
14 testimony. The other danger is that a portion of the  
15 transcript, which the jury doesn't have, is taken out of  
16 context.

17           The court has recognized these dangers in the context of  
18 considering the trial court's discretion on whether or not to  
19 permit jurors to even see transcripts at all. Given those  
20 concerns, which we think are equally present in the context of  
21 closing and also the Court's instruction to the jury on page  
22 69 about their recollection of the evidence controls, we think  
23 it's unfair to put portions, small portions of the trial  
24 testimony, which the jury has not seen, these trial proceeding  
25 transcripts on the screen during closing.

1           To be clear, we don't object to the display of other  
2 transcripts which jurors have seen during this trial, and we  
3 think that that's fair game, but we would object to the  
4 testimony of witnesses being placed on the screen in the  
5 context of the PowerPoint or otherwise during closings.

6           THE COURT: And are you objecting to a lawyer  
7 stating what the witness's testimony was as opposed to saying  
8 I got a transcript here and reading from it?

9           MS. GLATFELTER: I am not objecting at all. We are  
10 not objecting at all to saying what a witness said to the  
11 jury, but putting a transcript which purports to be an  
12 official proceeding, I think, places undue weight of the trial  
13 transcript before the jury. And, you know, could create other  
14 issues that the Court would have to deal with.

15           THE COURT: Very well. Does counsel for  
16 Mr. Householder wish to be heard?

17           MR. BRADLEY: Judge, there is a distinction between  
18 a transcript going back to the jury. Of course that's not  
19 going to happen. But as Ms. Glatfelter acknowledged, the  
20 Court does have discretion to allow us to utilize the  
21 transcript or at least portions of that as part of our  
22 presentation in closing arguments. And I'll remind the Court  
23 what you already know, that this has been a lengthy trial, and  
24 it's difficult for jurors to recall the detail of certain  
25 testimony from witnesses six or seven weeks ago. And we think

1 it's reasonable to allow us to utilize portions of that  
2 testimony.

3 And we have in the past displayed -- courts in the past  
4 have allowed us to display portions of the transcript and  
5 along with an accompanying limiting instruction explaining  
6 that ultimately the jury is to rely on their collective  
7 recollections of the testimony.

8 THE COURT: Very well. You have been fully heard?

9 MR. BRADLEY: Yes.

10 THE COURT: On behalf of Mr. Borges?

11 MR. SCHNEIDER: I'm not sure that we plan on  
12 displaying anything that Ms. Glatfelter's talking about, but  
13 we do rely on what Mr. Bradley just advised the Court.

14 THE COURT: Very well.

15 MS. GLATFELTER: Your Honor, if I may?

16 THE COURT: Yes.

17 MS. GLATFELTER: Putting the transcript on the  
18 screen and then telling the jury that they can't have the  
19 transcript is a problem because the message to the jury is  
20 that I've got -- the official words of what was said in my  
21 transcript is more important than your recollection. It  
22 conflicts with the instructions.

23 If we -- I can guess what the questions will be from the  
24 jury as soon as they get back to the deliberation room if we  
25 allow this to happen. The judge will be confronted with what

1 do we do about the transcripts during deliberations and  
2 whether we have to send all the transcripts back and whether  
3 all the parties need to review them for accuracy and  
4 redactions and so on and so forth.

5 THE COURT: Very well. Here's my ruling. Clips or  
6 portions of the transcripts should not, shall not, will not be  
7 used in closing arguments. Using transcripts piecemeal takes  
8 the testimony out of context. It's precisely why the  
9 transcripts will not go back to the jury that it makes it so  
10 important to not present the testimony out of context.

11 And it also tells the jurors that the transcript exists,  
12 which will then prompt the jury to ask for the transcripts  
13 during deliberations.

14 The defense can accomplish their end goal by simply  
15 discussing the testimony and the evidence. The clips or  
16 portions of the transcripts shall not be used in closing  
17 argument. Understood by the government?

18 MS. GLATFELTER: Yes, Your Honor. And I understand  
19 you to be talking about the trial transcripts. We are okay to  
20 show the transcripts of the recordings.

21 THE COURT: Yes, by "transcripts," I meant  
22 transcripts of the trial testimony.

23 MS. GLATFELTER: Thank you, Your Honor. We  
24 understand.

25 THE COURT: Mr. Bradley, you acknowledge the Court's

1 ruling?

2 MR. BRADLEY: Understood with one point of  
3 clarification. I understand that the Court is prohibiting  
4 from display. Can we read from portions of it?

5 THE COURT: Not if it's clear you are doing that.  
6 I'm going to jump on you if you do.

7 MR. BRADLEY: I understand the Court's ruling.

8 THE COURT: Very well.

9 MR. SCHNEIDER: Understand the Court's ruling.

10 THE COURT: Very well. Anything further from -- we  
11 will go around the room -- the government?

12 MS. GLATFELTER: No, Your Honor. Thank you.

13 THE COURT: From Mr. Householder's counsel?

14 MR. OLESKI: One moment, Your Honor.

15 THE COURT: Okay.

16 MR. OLESKI: Judge, we -- the only other thing we  
17 have for this, we'd just renew our objections to the Court's  
18 jury instructions based on the instructions that we proposed,  
19 based on our objections to the government's -- based on our  
20 objections to the government's instructions, and based on the  
21 objections that we made during the charge conference. Other  
22 than that, we have nothing further.

23 THE COURT: Very well. Anything further,  
24 Mr. Schneider or Mr. Todd Long?

25 MR. LONG: Your Honor, we would just likewise



1 preserve our objections to the jury instructions that were  
2 raised prior to and during the charging conference. Thank  
3 you.

4 THE COURT: Very well. Well, I guess you guys got  
5 some work to do. I'll see you tomorrow in the courtroom at 9.  
6 We are in recess till that time.

7 THE COURTROOM DEPUTY: All rise. This court is in  
8 recess.

9 (Proceedings continued in progress at 4:03 p.m.)

10 CERTIFICATE OF REPORTER

11  
12 I, Mary A. Schweinhagen, Federal Official Realtime  
13 Court Reporter, in and for the United States District Court  
14 for the Southern District of Ohio, do hereby certify that  
15 pursuant to Section 753, Title 28, United States Code that the  
16 foregoing is a true and correct transcript of the  
stenographically reported proceedings held in the  
above-entitled matter and that the transcript page format is  
in conformance with the regulations of the Judicial Conference  
of the United States.

17 s/Mary A. Schweinhagen

9th of March, 2023

18 MARY A. SCHWEINHAGEN, RDR, CRR  
19 FEDERAL OFFICIAL COURT REPORTER  
20  
21  
22  
23  
24  
25